

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4

BLUE CROSS and BLUE SHIELD)
5 OF NEW JERSEY, INC., et al,)
6 Plaintiffs,)

7 vs.)

Case No.

) 98 CIV.3287 (JBW)

8 PHILIP MORRIS, INCORPORATED,)
et al,)
9 Defendants.)

10 -----)

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12
13 VIDEOTAPED DEPOSITION OF MIKE SZYMANCZYK
14 New York, New York
15 Thursday, September 7, 2000
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22

23 Reported by:
OTIS DAVIS
24 JOB NO. 112430
25

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2
3 September 7, 2000
4 9:52 a.m.
5

6 Videotaped Deposition of MIKE
7 SZYMANCZYK, held at the offices of Orrick,
8 Herrington & Sutcliffe, LLP, 666 Fifth
9 Avenue, New York, New York 10103, pursuant
10 to Notice, before Otis Davis, a Notary
11 Public of the State of New York.
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2 A P P E A R A N C E S:
3

4 DEWEY BALLANTINE, LLP
5 Attorney for Plaintiffs
6 BLUE CROSS and BLUE SHIELD
7 OF NEW JERSEY, INC.
8 1301 Avenue of the Americas
9 New York, New York 10019
10 BY: MICHAEL C. HEFTER, ESQ.
11 -and-
12 ALEXANDER KAYNE, ESQ.
13
14 NESS, MOTLEY, LOADHOLT,
15 RICHARDSON & POOLE, ESQS.
16 Attorneys for Plaintiff
17 ROBERT A. FALISE
18 28 Bridgeside Boulevard
19 P.O. Box 1792
20 Mount Pleasant, South Carolina 29465
21 BY: RONALD L. MOTLEY, ESQ.
22 -and-
23 SUSAN NIAL, ESQ.
24 -and-
25 ANNE McGUINNESS KEARSE, ESQ.

4

1
2 A P P E A R A N C E S: (Cont'd)
3
4 ARNOLD & PORTER, ESQS.
5 Attorneys for Defendant
6 PHILIP MORRIS, INCORPORATED
7 555 12th Street, N.W.
8 Washington, D.C. 20004
9 BY: PETER K. BLEAKLEY, ESQ.
10 -and-
11 JAMES M. ROSENTHAL, ESQ.
12
13
14 ZACK KOSNITZKY, ESQ.
15 Attorney for Defendant
16 PHILIP MORRIS, INCORPORATED
17 Nations Bank Tower
18 100 S.E. 2nd Street, Suite 200
19 Miami, Florida 33131
20 BY: STEPHEN N. ZACK, ESQ.
21
22
23
24
25

5

1
2 A P P E A R A N C E S: (Cont'd)
3
4 DECHERT, PRICE & RHOADS, ESQS.
5 Attorneys for Defendant
6 PHILIP MORRIS, INCORPORATED
7 400 Bell Atlantic Tower
8 1717 Arch Street
9 Philadelphia, Pennsylvania 19103
10 BY: SAMUEL E. KLEIN, ESQ.
11
12 HUNTON & WILLIAMS, ESQS.
13 Attorneys for Defendant
14 PHILIP MORRIS, INCORPORATED

15 Riverfront Plaza, East Tower
16 951 East Byrd Street
17 Richmond, Virginia 23219
18 BY: KERRY L. GREY, ESQ.
19
20 COLLIER SHANNON SCOTT, PLLC
21 Attorneys for Defendant
22 R.J. REYNOLDS TOBACCO COMPANY
23 3050 K Street, N.W., Suite 400
24 Washington, D.C. 20007
25 BY: THOMAS W. MITCHELL, ESQ.

6

1
2 A P P E A R A N C E S: (Cont'd)
3
4 WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP
5 Attorneys for Defendant
6 R.J. REYNOLDS TOBACCO COMPANY
7 200 West Second Street
8 Post Office Drawer 84
9 Winston-Salem, North Carolina 21702
10 BY: THOMAS D. SCHROEDER, ESQ.
11

12 SHOOK, HARDY & BACON, LLP
13 Attorneys for Defendant
14 LORILLARD TOBACCO COMPANY
15 One Kansas City Place
16 1200 Main Street
17 Kansas City, Missouri 64105
18 BY: TERRENCE J. SEXTON, ESQ.
19
20 SEDGWICK, DETERT, MORAN & ARNOLD, ESQS.
21 Attorneys for Defendant
22 BROWN & WILLIAMSON TOBACCO CORPORATION
23 125 Broad Street, 39th Floor
24 New York, New York 10004
25 BY: JAMES T. CONLON, ESQ.

7

1
2 A P P E A R A N C E S: (Cont'd)
3 (VIA TELEPHONE)
4 JACKSON & KELLY, ESQS.
5 Attorneys for Defendant
6 BROWN & WILLIAMSON TOBACCO COMPANY
7 P.O. Box 553
8 Charleston, West Virginia 25322
9 BY: HENRY JERNIGAN, ESQ.
10
11 ALLEN, GUTHRIE & McHUGH, ESQS.
12 Attorneys for Defendant
13 PHILIP MORRIS, INCORPORATED
14 1300 Bank One Center
15 Charleston, West Virginia 25301
16 BY: PAMELA KANDZARI, ESQ.
17
18 THOMPSON & COBURN, ESQS.
19 Attorneys for Defendant
20 LORILLARD TOBACCO COMPANY
21 One First Star Plaza
22 St. Louis, Missouri 64103
23 BY: JAMES COX, ESQ.
24
25

1
2 A P P E A R A N C E S (Cont'd)
3 (VIA TELEPHONE)
4 FARRELL, FARRELL & FARRELL, ESQS.
5 Attorneys for Defendant
6 LORILLARD TOBACCO COMPANY
7 914 Fifth Avenue
8 Huntington, West Virginia 25772
9 BY: RICHARD HOLTZAPFEL, ESQ.

10
11 HENDRICKSON & LONG, ESQS.
12 Attorneys for Plaintiffs in Blankenship Case
13 P.O. Box 1070
14 Charleston, West Virginia 25339
15 BY: SCOTT LONG, ESQ.

16
17 ALSO PRESENT:
18 TAMMY D. CAULEY, Paralegal
19 RUBEN MARTINEZ, Videographer
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5 IT IS HEREBY STIPULATED AND AGREED,
6 by and among counsel for the respective
7 parties hereto, that the filing, sealing and
8 certification of the within deposition shall
9 be and the same are hereby waived;

10 IT IS FURTHER STIPULATED AND AGREED
11 that all objections, except as to the form
12 of the question, shall be reserved to the
13 time of the trial;

14 IT IS FURTHER STIPULATED AND AGREED
15 that the within deposition may be signed
16 before any Notary Public with the same force
17 and effect as if signed and sworn to before
18 the Court.
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1
2 THE VIDEOGRAPHER: This is tape number 1
3 of the videotaped deposition of Mr. Mike
4 Szymanczyk in the matter of Blue Cross &
5 Blue Shield of New Jersey, Inc., et al,
6 plaintiffs, versus Philip Morris,
7 Incorporated, et al, defendants, in the
8 United States District Court, Eastern
9 District of New York, case number 98
10 CIV.3287 (JBW).

11 This deposition is being held at 666
12 Fifth Avenue, New York, New York on
13 September the 7, 2000 at approximately 9:50
14 a.m.

15 My name is Ruben Martinez from the
16 firm of Esquire Video Services. I am the
17 legal video specialist. The Court Reporter
18 is Mr. Otis Davis in association with
19 Esquire Deposition Services.

20 Would counsel please introduce
21 themselves.

22 MR. MOTLEY: This case was also
23 noticed in the matter Robert Falise,
24 F-A-L-I-S-E, versus the same defendants and
25 in the same court, and also in the case of

11

1 Blankenship versus Philip Morris and others
2 pending in the State Court of West Virginia.
3 I do not know which county Wheeling is in.
4 Would somebody enlighten me.

5 MR. KLEIN: Ohio County.

6 MR. MOTLEY: With that, I suppose we
7 ought to introduce ourselves on the record.

8 My name is Ron Motley. I am lead
9 counsel in the Falise matter and in the
10 Blankenship matter, and I will be asking
11 questions on behalf of those two claimants.

12 MS. KEARSE: Anne Kearse with Ness,
13 Motley on behalf of the plaintiffs also.

14 MR. HEFTER: Michael Hefter from Dewey
15 Ballantine on behalf of the Blue Cross &
16 Blue Shield plaintiffs.

17 MS. NIAL: Susan Nial from Ness,
18 Motley, representing Falise.

19 MR. KAYNE: Alexander Kayne of Dewey
20 Ballantine with Blue Cross/Blue Shield
21 plaintiffs.

22 MR. BLEAKLEY: Peter Bleakley with
23 Arnold & Porter, counsel for the witness and
24 for Philip Morris in the Falise and Blue
25

12

1 Cross cases.

2 MR. ZACK: Stephen Zack of Zack
3 Kosnitzky, counsel for the witness and
4 Philip Morris.

5 MR. ROSENTHAL: James Rosenthal, also
6 counsel for the witness and Philip Morris.

7 MS. GREY: Kerry Grey, counsel for
8 Philip Morris.

9 MR. SEXTON: Terry Sexton, Shook,
10 Hardy & Bacon, counsel for the Lorillard
11 Tobacco Company.

12 MR. MITCHELL: Tom Mitchell from
13 Collier Shannon Scott, representing R.J.
14 Reynolds in the Blue Cross case.

15 MR. CONLON: James Conlon from
16 Sedgwick, Detert, representing Brown &
17 Williamson in the Blue Cross/Blue Shield
18 case.

19 MR. SCHROEDER: Thomas Schroeder of
20 Womble, Carlyle, for R.J. Reynolds.
21

22 MR. KLEIN: Sam Klein from Dechert,
23 representing Philip Morris in the
24 Blankenship case.
25 MR. MOTLEY: Would you folks from West

13

1
2 Virginia kindly reidentify yourself for the
3 record and state who you represent.

4 MR. JERNIGAN: Henry Jernigan with
5 Jackson & Kelly in Charleston, West
6 Virginia.

7 MR. MOTLEY: Next, please.

8 MS. KANDZARI: Pamela Kandzari for
9 Philip Morris, Incorporated, locally in the
10 Blankenship matter, from Allen, Guthrie &
11 McHugh.

12 MR. LONG: Scott Long from Hendrickson
13 & Long in Charleston, West Virginia, counsel
14 for plaintiffs in the Blankenship matter.

15 MR. COX: James Cox from Thompson &
16 Coburn in St. Louis, Missouri, for Lorillard
17 in the Blankenship matter.

18 MR. HOLTZAPFEL: Rich Holtzapfel from
19 Farrell, Farrell & Farrell in Huntington,
20 West Virginia, local counsel for Lorillard.

21 MR. MOTLEY: It suits the plaintiffs
22 that the objection of one defendant will be
23 applicable to every defendant. But usually,
24 what we do is one objection stands for all,
25 if that's satisfactory.

14

1
2 If you want to disassociate yourself
3 from the objection, feel free to do so.

4 MR. SCHROEDER: Mr. Motley, you had
5 made a brief statement before not on the
6 record. Can you just put that on the front
7 end.

8 MR. MOTLEY: Yes. And the West
9 Virginia folks may or may not have been on
10 the line or herd what I said.

11 Because in Blankenship there is no
12 procedural order in place with respect to
13 the so-called privileged documents,
14 particularly the Bliley 39,000 documents, I
15 have stipulated on behalf of the plaintiffs
16 in Blankenship that for the purpose of this
17 deposition, the plaintiffs will be bound by
18 the dictates of the Order by the Honorable
19 Jack Weinstein in the Blue Cross/Blue Shield
20 and Falise cases with respect to the
21 preservation of claims of privilege for any
22 defendant whose document falls within a
23 claimed privilege in these cases, "these
24 cases" being Falise and Blue Cross/Blue
25 Shield.

15

1
2 M I K E S Z Y M A N C Z Y K, called as a
3 witness, having been duly sworn by a Notary
4 Public, was examined and testified as
5 follows:
6 EXAMINATION BY

7 MR. MOTLEY:
8 Q. Please state your name and address for
9 the record.
10 A. Mike Szymanczyk, 120 Park Avenue, New
11 York, New York 10017.
12 Q. Again, Mr. Szymanczyk, good morning. My
13 name is Ron Motley. I am from Charleston, South
14 Carolina. We have never met. It's a pleasure to
15 meet you, sir.
16 A. It's a pleasure to meet you.
17 Q. If you need a break at any time, you
18 just raise your hand, and for whatever reason, we
19 will stop to accommodate you, for whatever reasons
20 you might have.
21 A. Thank you.
22 Q. Mr. Szymanczyk, where do you reside,
23 where is your home?
24 A. Well, I reside in Connecticut.
25 Q. I believe you said you have an office on

16

1 Szymanczyk
2 Park Avenue in New York.
3 A. My office is at Philip Morris in New
4 York City, yes.
5 Q. Do you have an office in Richmond,
6 Virginia also?
7 A. I do not.
8 Q. You understand this deposition is being
9 noticed in three different cases; two pending in
10 federal court in Brooklyn, and one pending in Ohio
11 County, West Virginia, State Court? I assume you
12 understand that this is being done in multiple
13 cases?
14 A. I understand, yes.
15 Q. Mr. Szymanczyk, I have read testimony
16 that you gave in a case called Engle versus Philip
17 Morris, and I take it you are familiar with the
18 legal process having or at least the legal process
19 that's practiced in Miami, having been there in
20 person and testifying?
21 A. That would be correct.
22 Q. Have you given any deposition other than
23 the one in the Engle case?
24 A. No, I have not.
25 Q. Would you just state briefly,

17

1 Szymanczyk
2 Mr. Szymanczyk, your history of employment at
3 Philip Morris.
4 A. At Philip Morris?
5 Q. Yes.
6 A. I started to work at Philip Morris, I
7 think, at the end of October of 1990, and my job at
8 that point in time was a senior vice president of
9 sales for Philip Morris, Incorporated, also known
10 as Philip Morris U.S.A.; and I had that job for
11 approximately four years, at which time I became
12 executive vice president of marketing and sales at
13 market research, and I held that position for
14 approximately three years, just under three years;
15 and then I became chief operating officer of the
16 company in June of 1987; and I became president and
17 chief executive officer in 1997. I may have said

18 '87 before, it's '97.
19 Q. Mr. Szymanczyk, your current position
20 then is what?
21 A. Is president and chief executive officer
22 of Philip Morris, Incorporated.
23 Q. Also known as Philip Morris U.S.A.?
24 A. Correct.
25 Q. You report to Mr. Jeffrey Bible?

18

1 Szymanczyk
2 A. I do not.
3 Q. Who do you report to?
4 A. I report to the chief operating officer
5 of Philip Morris Companies, Incorporated. His name
6 is William Webb.
7 Q. William Webb?
8 A. William Webb also.
9 Q. And the next person up in line would be
10 Mr. Bible?
11 A. Mr. Webb reports to Mr. Bible, yes.
12 Q. Are you a smoker?
13 A. I am not a regular smoker.
14 Q. I take it from that answer you smoke on
15 occasions?
16 A. I do, yes.
17 Q. What brand do you smoke, sir?
18 A. I typically smoke Marlboro Ultra Lights
19 when I smoke.
20 Q. Do you have any children?
21 A. I do, yes.
22 Q. How many children, sir?
23 A. Three.
24 Q. What are their ages?
25 A. Twenty-five, twenty-two and sixteen.

19

1 Szymanczyk
2 Q. Have you ever had any discussions with
3 your sixteen-year-old child with respect to
4 smoking?
5 A. I have.
6 Q. Can you share with us, if it's not too
7 personal, what you might have told your child?
8 A. Well, I shared with my child that there
9 are substantial health risks associated with
10 smoking; that you shouldn't smoke; that it's not
11 legal for him to smoke; that smoking is an adult
12 choice; and my advice to him is that he should not
13 smoke; and that I won't, in fact, tolerate him
14 smoking as a minor.
15 I have had that discussion in the
16 context of similar discussion with alcohol and
17 other adult behaviors that I don't want my child to
18 engage in.
19 Q. At Philip Morris U.S.A., do the
20 employees get annual physicals?
21 A. I can't answer that question. I mean,
22 I'm sure some do.
23 Q. Do you know whether a chest X-ray would
24 be part of whatever annual examinations are given
25 to Philip Morris employees?

20

1 Szymanczyk
2 A. I think that's dependent upon what a

3 doctor recommends in terms of a particular
4 employee.
5 Q. Mr. Szymanczyk, do you personally
6 believe that cigarettes have caused death by lung
7 cancer in any human being who is an American
8 citizen?
9 A. Just to be clear, you are asking me for
10 my personal opinion --
11 Q. Your personal opinion, sir.
12 A. -- or are you asking me for my position
13 as the CEO of the company?
14 Q. Let me ask you first your personal
15 opinion.
16 Do you believe that cigarette smoking
17 have caused the death of a single United States
18 citizen from lung cancer who smoked for 25 or more
19 years?
20 A. Well, I don't know that for a fact, but
21 I would say that statistics would indicate that
22 that has likely occurred.
23 Q. I will ask you the same question with
24 respect to your position as CEO of Philip Morris
25 U.S.A.

21

1 Szymanczyk
2 A. I would say that it's the same. My
3 belief is that smoking is bad for your health, and
4 I think that the company's position on smoking is
5 that it causes disease.
6 Q. You said you smoke Marlboro Ultra
7 Lights.
8 Other than tobacco, which is, obviously,
9 in Marlboro Ultra Lights, do you have personal
10 knowledge of what flavorings and other ingredients
11 that are not tobacco are in Marlboro Ultra Lights?
12 A. Not precisely. That information is
13 available on our web site, but I don't have it
14 memorized off the top of my head.
15 Q. Before it was placed on the web site,
16 did you know what ingredients were in Marlboro
17 Ultra Lights?
18 A. Again, I hadn't gone to the extent of
19 memorizing the ingredients that were in that
20 product, but all of the ingredients that are in
21 Philip Morris's products have been made available
22 to the public health authorities, in particular,
23 the FTC, on a regular basis. That's something we
24 have to provide annually.
25 So I am aware that the list exists, and

22

1 Szymanczyk
2 I have seen the list, but I can't tell you
3 precisely what that information would be for
4 Marlboro Ultra Lights.
5 Q. Have you prepared for this deposition in
6 any fashion, that is have you had any -- I don't
7 want to know the content, nor am I allowed to know
8 the content of any discussion of any lawyer
9 representing yourself or Philip Morris. But have
10 you had discussion with these lawyers prior to this
11 deposition?
12 A. Yes, I have.
13 Q. Do you understand the general nature of

14 the claims that are being made in the Falise case?
15 A. I believe in general, yes. I have a
16 general knowledge of it.
17 Q. What is your general knowledge of the
18 claim being made in the Falise case, sir?
19 A. My general knowledge is that the parties
20 who have paid asbestos claims have made the claim
21 that tobacco companies should reimburse them for
22 having made those payments, because in some way,
23 tobacco may have caused the injury to the
24 individuals to whom they have made claims based on
25 asbestos-related diseases.

23

1 Szymanczyk
2 Q. Do you know what the term "synergism"
3 means?
4 A. Probably not in the context that you are
5 using it.
6 Q. In the context of the Falise case.
7 A. No. I don't think I really do have an
8 understanding of that.
9 Q. With respect to the Blankenship case,
10 are you aware of the general nature of the claim
11 that's being made there?
12 A. Again, I think I have a general
13 knowledge.
14 Q. Can you tell me what your general
15 knowledge is?
16 A. It's a case, I believe, where the
17 claimants are requesting funds being paid to pay
18 for medical monitoring of people who smoke to
19 determine if they contributed disease.
20 Q. Are you familiar with an organization
21 called Burson Marsteller?
22 A. I have heard of them, yes.
23 Q. Have you ever had any meetings with them
24 with respect to how to make a presentation to
25 public audiences?

24

1 Szymanczyk
2 A. Not that I remember.
3 Q. Have you made any presentations at
4 meetings of stockholders of Philip Morris
5 Companies?
6 A. No, I have not.
7 Q. Have you been in attendance when
8 Mr. Bible have made such presentations?
9 A. I have been at some annual meetings.
10 Q. Where are the annual meetings of Philip
11 Morris Companies generally held?
12 A. They are held in Richmond, Virginia.
13 Q. Is Richmond, Virginia the largest Philip
14 Morris U.S.A. facility?
15 A. It's the local where we have the most
16 people located, yes. We have a factory there.
17 Q. How many people are employed in
18 Virginia, not only Richmond but other places in
19 Virginia?
20 A. I'm not sure I know that exact number.
21 It's several thousand.
22 Q. Is the Philip Morris research and
23 development center in Virginia?
24 A. Yes, our R and D facility is in

1 Szymanczyk

2 Q. Is your sales department in Virginia?

3 A. Well, our salespeople are all over the
4 country. So they would not be all in Virginia.
5 There are some in Virginia, but our people are all
6 over the country.

7 Q. When you held the marketing positions
8 that you have described to us from 1990 until you
9 became chief operating officer, where was your
10 office?

11 A. It was in New York City.

12 Q. I was asking you about meeting with the
13 attorneys. Can you tell me approximately how many
14 times you met with attorneys in preparation for
15 this session that we are embarked upon here today?

16 A. I think we met twice.

17 Q. Total of how many hours?

18 A. I don't know off the top of my head, but
19 I guess, if you took the total hours, it was a good
20 business day.

21 Q. In preparation for your testimony in the
22 Engle case, the Florida case, did you go through a
23 session where lawyers asked you questions that you
24 were likely to be asked when you came to trial?

25 MR. BLEAKLEY: Objection.

1 Szymanczyk

2 Q. You can answer.

3 A. In preparation for the Engle case where
4 I gave direct testimony, I worked on a number of
5 things, in particular, the testimony that I was
6 going to give. But yes, I reviewed with attorneys
7 subjects that I would want to be knowledgeable
8 about.

9 Q. In particular, did you have an attorney
10 that would ask you questions in the somewhat
11 fashion that I am doing it now, probably a lot
12 better, but would be asking you questions and you
13 would give a response, and then you would discuss
14 your answer?

15 MR. BLEAKLEY: Objection.

16 A. I have been in circumstances where
17 attorneys would ask me questions and I would give
18 answers to the questions.

19 Q. And these were Philip Morris attorneys?

20 A. Yes.

21 Q. Were those sessions videotaped?

22 A. No.

23 Q. Were there any nonlawyer attendees, like
24 somebody from a communications department or
25 something like that?

1 Szymanczyk

2 A. No, I don't believe so.

3 Q. You met my distinguished colleague
4 Mr. Dan Webb in the Florida case, did you not?

5 A. I met Dan Webb, yes.

6 Q. In reparation for your testimony in the
7 Engle case, Mr. Szymanczyk, did you review the
8 comments that Mr. Webb made to the jury before you
9 took the witness stand; in other words, he made a

10 statement to the jury about what the testimony
11 would be, and I was curious as to whether or not
12 you had reviewed Mr. Webb's remarks that preceded
13 your taking the witness stand?

14 A. No, I don't believe I did.

15 Q. Have you had a chance to review the
16 transcript of the testimony that you gave in the
17 Engle case?

18 A. I have not done that, no.

19 MR. MOTLEY: Would you mark this as
20 Exhibit 1, please.

21 (Plaintiff's Exhibit 1, page of Philip
22 Morris web site article, marked for
23 identification, as of this date.)

24 THE VIDEOGRAPHER: The time is 10:20
25 a.m. We are going off the record.

28

1 Szymanczyk

2 (Discussion off the record.)

3 THE VIDEOGRAPHER: The time is 10:32
4 a.m. We are back on the record.

5 Q. Mr. Szymanczyk, I have given you
6 Plaintiff's Exhibit number 1, which I will
7 represent to you is a Xerox copy of the August 22,
8 2000 page 1 of the Philip Morris web site.

9 Are you familiar with the Philip Morris
10 web site?

11 A. Yes, I am reasonably familiar with it.

12 Q. It starts off, it says, "Philip Morris
13 U.S.A."

14 That's the company that you are chief
15 executive officer of currently; is that correct?

16 A. That's correct.

17 Q. You say, "We are more than 13,000 people
18 working across the United States and five U.S.
19 territories with one overriding mission, to be the
20 most responsible, effective and respected
21 developer, manufacturer and marketer of consumer
22 products made for our adults. Our core business is
23 manufacturing the best quality tobacco products
24 available to adults who choose to use them."

25 This is September the 7th of the year

29

1 Szymanczyk

2 2000. Do you stand by that statement today as the
3 responsibility of Philip Morris?

4 A. This is the mission of Philip Morris,
5 and I would say that yes, this continues to be our
6 mission.

7 Q. You state that, "To accomplish this
8 mission, we rely on a set of core values to guide
9 us," and the very first one listed is, "First, we
10 believe in operating with integrity, trust and
11 respect, both as individuals and as a company," and
12 then you say, "this means we conduct ourselves
13 within both the spirit and the letter of the law,
14 regulations, agreements and policies that govern
15 us. We are honest with one another and with our
16 stakeholders, fully disclosing all appropriate
17 information, and not just that which supports our
18 point of view. We have the courage to do what's
19 right."

20 Does that core value govern the

21 operation of your company today on September the
22 7th, the year 2000?

23 A. Yes, it does.

24 Q. When you testified on May the 10th of
25 this year in the Engle case in a deposition, you

30

1 Szymanczyk
2 stated that, when you went down to Florida to
3 testify before the jury, "I intend on talking
4 about," in the Engle case, "how we run the business
5 under my leadership, and what some of the things
6 are that we are doing in terms -- start over.

7 You testified that, "I intend on talking
8 about in Engle how we run the business under my
9 leadership and what some of the things are that we
10 are doing in terms of the operation of the business
11 today."

12 Would it be fair to say that your
13 intention would be the same with respect to the
14 Falise case and the Blankenship case and the Blue
15 Cross case, that is to explain to folks how you run
16 the business today under your leadership?

17 MR. SCHROEDER: Objection.

18 Q. You can answer.

19 A. Well, what I am here to talk about is
20 how I run the business.

21 Q. That's all I want. It wasn't a trick
22 question.

23 In your trial testimony on June the 12th
24 of the year 2000, you told a jury in Miami that you
25 believed that implementing changes in how Philip

31

1 Szymanczyk
2 Morris did business was part of your personal
3 mission.

4 Do you recall that?

5 MR. SCHROEDER: Objection.

6 A. I would have to see the actual
7 testimony. I don't recall the specifics of the
8 statement that you are referring to.

9 Q. It's actually the page number 53583, and
10 this is the testimony on June the 12th of this year
11 in Florida, and the witness called was you, and the
12 reference I was making, the page reference, is
13 53606 and 53607 from the official transcript, and I
14 have yellowed your testimony, sir. If you might
15 look at that and refresh your memory.

16 A. Okay.

17 Q. These are questions that were asked of
18 you by Mr. Webb, the lawyer for Philip Morris, and
19 I would like to read them into the record. If I
20 can have them back.

21 A. I would like to refer to them while you
22 ask me questions.

23 Q. Mr. Webb asked you, "I want to go right
24 to the time that you started as a chief executive
25 officer and president of Philip Morris U.S.A. in

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1 Szymanczyk
2 November of 1997. When you became the CEO of that
3 company, did you believe that implementing changes
4 in how Philip Morris did business was part of your
5 mission as CEO?" And your answer was, "Yes, I

6 did."
7 And then you were asked, "Would you tell
8 the jury why?" And you said, "Well, when I became
9 CEO, the company was involved in a substantial
10 amount of litigation; it had suits filed against it
11 by most all of the states in the United States, by
12 the Attorneys General of the United States, and it
13 was pretty clear that the company was out of
14 alignment with society's expectations of it. So my
15 job, as I became CEO, was to see if I couldn't fix
16 it."

17 Would you confirm that I read that
18 correctly, sir?

19 MR. SCHROEDER: Objection.

20 A. Okay.

21 Q. Did I read it correctly?

22 A. I believe you did.

23 Q. When you made that statement under oath,
24 was it true?

25 A. Yes, I believe it was true. I went on

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1 Szymanczyk
2 to say some other things beyond this.

3 Q. I understand. I have the whole
4 transcript here.

5 Do you recall stating that, "Certain
6 agreements that were entered into between Philip
7 Morris U.S.A. and the Attorneys General of the
8 various states included restrictions on how Philip
9 Morris conducted its business"?

10 A. Can I take a look at that.

11 Q. I am just asking you generally, is that
12 true?

13 A. I would agree that we have entered into
14 a Master Settlement Agreement with the states,
15 which, in fact, provides a set of regulatory rules
16 that govern the industry, in particular, govern a
17 number of our marketing practices and other action
18 we take.

19 Q. And, indeed, sir, I believe you are
20 proud of the degree of cooperation your company has
21 had with the Attorneys General of the United States
22 who have been operating with you to make sure that
23 these terms and agreements are carried forth,
24 right?

25 A. Well, I believe -- I feel like the

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1 Szymanczyk
2 company has done a very good job in making sure it
3 carried out what it agreed to; and, in fact, we
4 have had discussions with Attorneys General that go
5 beyond what we have agreed to, and, in fact, have
6 taken some actions that go beyond what has been
7 agreed to in the Master Settlement Agreement.

8 Q. The Agreement that you entered into
9 included certain provisions in addition to
10 marketing with respect to turning over documents so
11 that the public would have access to them, is that
12 not correct?

13 A. That's correct.

14 Q. And, in fact, Philip Morris did that?

15 A. That is correct.

16 Q. It also required that Philip Morris no

17 longer refuse to provide public health officials
18 with internal company research and development
19 reports and alike, correct?

20 A. Well --

21 MR. SCHROEDER: Objection.

22 A. -- I don't know exactly what you
23 mean -- is there an objection?

24 MR. BLEAKLEY: You can answer.

25 A. I don't know exactly what you mean by

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1 Szymanczyk

2 that. But what we agreed to was make available
3 information, and the Attorneys General have the
4 right to come into the company and review any
5 documents that they wish to review. And we produce
6 documents. As we produce documents, we put them on
7 our web site and make them generally available to
8 the public.

9 Q. And Philip Morris also agreed not to
10 engage in a debate with the public health officials
11 about the cigarette-caused diseases; but, in fact,
12 to inform their customers to rely on public health
13 officials, did they not?

14 A. That was not an element of the Master
15 Settlement Agreement. In 1997, we agreed with some
16 members of Congress that there should be but one
17 voice to the public on matters of smoking and
18 health, and that was the public health authorities,
19 and we have operated accordingly.

20 Q. You have operated accordingly; in other
21 words, the public, the consuming public, should
22 rely on what the public health authorities say
23 about cigarettes and diseases; and, in fact, on
24 your web site, you direct anybody who is interested
25 to certain public health official statements, do

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1 Szymanczyk

2 you not?

3 A. We make that information available so
4 that people can access it, that's correct.

5 Q. Mr. Webb, the counsel for Philip Morris
6 in the Falise case, in his opening statement
7 represented to the jury with respect to your
8 testimony that you, Mr. Szymanczyk, basically made
9 the assumption based on, among other things,
10 allegations by the Attorneys General in this
11 country that things happened in the past that
12 should not have happened at Philip Morris, and that
13 we had to find out a way to deal with that.

14 Were you aware that Mr. Webb made that
15 representation to the jury?

16 A. I don't recall.

17 MR. BLEAKLEY: Objection.

18 Q. You don't recall that?

19 MR. BLEAKLEY: Go ahead.

20 A. I don't recall that, no.

21 Q. In fact, is that not true? Did you make
22 the assumption based on the allegations by the
23 Attorneys General in the United States that things
24 had happened in the past that should not have
25 happened at Philip Morris, and that you as CEO had

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1 Szymanczyk

2 to find out a way to deal with that?
3 MR. BLEAKLEY: Objection.
4 You can answer.
5 A. No, I did not make that assumption. I
6 made -- excuse me.
7 Q. Go ahead, you can finish your answer.
8 A. What I did was I made the assumption
9 that since, from a number of different points of
10 view, from the Attorneys General, from other
11 litigation, from proposed regulations, from media
12 reports, there was a mass of information that
13 indicated that people in general in society and
14 people representing society, like the Attorneys
15 General, elected officials, felt that the industry
16 needed, and Philip Morris is part of the industry,
17 to operate their business in a different way; that
18 expectations of a tobacco company were different in
19 their mind than what they perceived to be our
20 operation of the company; that we needed to get in
21 alignment with what they thought we needed to do as
22 representatives of the people.
23 And that's what my assumption was, and I
24 just assumed we needed to do it.
25 Q. If you don't mind, sir, would you please

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1 Szymanczyk
2 read what I have highlighted from Mr. Webb's
3 opening statement on May the 22nd, the year 2000.
4 A. He said, "He basically made the
5 assumption based on your verdict -- well, let me go
6 back. He said, "He is also going to tell you --
7 MR. BLEAKLEY: Are you asking him to
8 read that out aloud?
9 MR. MOTLEY: He can do --
10 MR. BLEAKLEY: Are you asking him?
11 MR. MOTLEY: Yes, I am.
12 MR. BLEAKLEY: Then I want to put an
13 objection on the record.
14 Q. Go ahead, sir.
15 A. "That he told you that his job was not
16 to look backwards, but he thought his job was to
17 look forward. He basically made the assumption
18 based on your verdict and other things that were
19 developing, allegations that developed by the
20 Attorneys General in this country, that things
21 happened in the past that should not have happened
22 in Philip Morris, and he had to find out a way to
23 deal with that."
24 Q. Mr. Webb represented to the jury that
25 you were going to say that, correct?

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1 Szymanczyk
2 MR. BLEAKLEY: Objection.
3 Q. That's what he said, right?
4 A. I don't know that he represented that I
5 was going to say that. He simply made that
6 statement.
7 Q. Do you agree or disagree with the
8 statement that he made?
9 A. I just answered that question.
10 Q. No, sir. You told me what assumptions
11 you made.
12 I want to ask you specifically: Do you

13 agree with the statement that you just read into
14 the record that Mr. Webb made to the jury before
15 you testified in the Florida case?

16 MR. BLEAKLEY: Objection.

17 Q. The highlighted part or whatever part
18 you want to look at.

19 A. I would agree with -- I agree that I
20 view my job is to look forward; that based on the
21 way things were developing and allegations by the
22 Attorneys General in this country, that they
23 believed things happened in the past that should
24 not have; that my job was to get us in alignment
25 with what the Attorneys General felt was

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1 Szymanczyk
2 appropriate in terms of the way we should operate
3 our business.

4 I believe my description of this would
5 be a bit different than the way Mr. Webb has stated
6 it.

7 Q. Do you recall Mr. Webb showing you and
8 the jury a chart of how Philip Morris had changed
9 its conduct since you became CEO of Philip Morris?
10 Do you remember that, he had a big chart up there
11 in front of the jury?

12 A. We had a number of charts.

13 Q. You had a chart that had peoples' names
14 on it, for example, that you had not known since
15 you had joined Philip Morris, that they were no
16 longer with Philip Morris, names such as William
17 Dunn, Jet Lincoln, Thomas Osdene, Robert Seligman,
18 and Helmet Wakeham.

19 Do you remember that chart?

20 A. I don't remember the chart specifically,
21 but I recall there was a chart with some peoples'
22 names and being asked whether or not those people
23 were still employed by the company.

24 Q. And your testimony was that they were
25 not, correct?

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1 Szymanczyk

2 A. I believe that's true.

3 MR. SCHROEDER: Objection.

4 Q. Do you recall him showing you a chart
5 that described the restrictions on cigarette
6 advertising, marketing, visibility to youths and
7 alike?

8 A. Do you have the specific chart?

9 Q. I have got the verbal description of it.
10 I don't have the chart itself. It was put into
11 evidence.

12 A. I don't know what particular chart you
13 are referring to. We have used a number of charts.

14 Q. In fact, in your advertisements that you
15 have taken out, you talk about recently the
16 changes -- and I am not saying this is a bad thing,
17 don't misunderstand me -- that Philip Morris has
18 made market changes in their advertising practices;
19 is that correct?

20 MR. KLEIN: Objection. That is a
21 subject matter that is at issue before the
22 Judge as to its relevancy in West Virginia.
23 I object to the testimony.

24 Q. You can answer, sir.
25 A. Give me the question again.

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1 Szymanczyk
2 Q. Philip Morris has conducted an
3 advertising campaign, talking about how the
4 advertising and marketing practices of Philip
5 Morris have changed on your watch, correct?
6 A. We have run some advertisements relative
7 to informing people on the issues that again have
8 been raised to us that society feels are important.
9 One of them is youth smoking prevention; and so, we
10 have informed the public on some of the actions
11 that we've taken in the area of youth smoking
12 prevention.
13 Some of those actions include some of
14 the things we have done relative to the Master
15 Settlement Agreement and on our own relating to
16 marketing practice.
17 Q. And this is a matter about which you are
18 duly proud, aren't you?
19 A. It's not a matter of whether or not I am
20 proud of it. It's a matter of whether I think it's
21 consistent with our mission, and that we are doing
22 the things that we said we need to do relative to
23 being a responsible company; and I believe that
24 those are actions that we believe are right to take
25 based on what the public health authorities are

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1 Szymanczyk
2 saying to us they believe is appropriate. We are
3 in some way following their guidance on a number of
4 these subjects.
5 Q. Your company has spent a good deal of
6 money informing the public about these changes in
7 the way Philip Morris conducts business, correct?
8 MR. KLEIN: Mr. Motley, may I have a
9 continuing objection to this line of
10 inquiry?
11 MR. MOTLEY: Surely, absolutely, sir.
12 Thank you for raising that.
13 A. I believe the media has informed them,
14 because most of these things get picked up and run
15 in the media as we do things and make changes in
16 the way we operate; and, of course, a number of
17 these things, like the MSA, has run in the media
18 and some of these things is a part of our
19 responsibility to go ahead and communicate to
20 people so that they will understand that we are
21 being open and honest about the way we conduct our
22 business and the way we have run our
23 advertisements.
24 Q. Do you recall a Philip Morris
25 United States of America advertisement, that among

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1 Szymanczyk
2 other things, said -- and I am going to show it to
3 you -- we believe that it is important for the
4 public to understand how this historic Agreement
5 changed the way tobacco is marketed, advertised,
6 and promoted in this country? Do you recall that
7 advertising copy?
8 MR. MOTLEY: Would you mark that as

9 Exhibit 2, please, sir.
10 (Plaintiff's Exhibit 2, Philip Morris
11 advertisement, marked for identification, as
12 of this date.)
13 Q. If you don't mind, I am going to put a
14 check mark by what I just read. You can read the
15 whole thing, if you would like, but just see if
16 that refresh your recollection of whether Philip
17 Morris U.S.A. ran such an advertisement.
18 A. Okay.
19 Q. My first question is, did I read into
20 the record the essence of what that advertisement
21 said with respect to that paragraph?
22 A. I believe you did.
23 Q. And that is a Philip Morris U.S.A.
24 advertisement that was paid for and published in
25 various news media outlets, correct?

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1 Szymanczyk
2 A. Yes. This, I believe, was run in
3 newspapers, essentially.
4 Q. Mr. Szymanczyk, in addition to these
5 advertisements, which Exhibit 2 is one example of,
6 Philip Morris created a web site which I just asked
7 you about a moment ago.
8 Do you recall that on the web site
9 Philip Morris states, "Cigarette smoking and
10 disease in smokers, there is an overwhelming
11 medical and scientific consensus that cigarette
12 smoking causes lung cancer, heart disease,
13 emphysema, and other serious diseases in smokers."
14 Do you recall that the web site says
15 that?
16 A. I believe that's accurate.
17 Q. Is that the current position on
18 September 7th of the year 2000 of the Philip Morris
19 Company of which you are chief executive officer
20 of?
21 A. Yes, it is.
22 Q. Is it not true, sir, that Philip Morris
23 put that statement on its web site because your
24 company wanted people to understand that that
25 information was true, and that is an important

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1 Szymanczyk
2 information for them to know?
3 A. Well, certainly, it's important for
4 people to know that information, and the web site,
5 which is really taking advantage of a relatively
6 recent phenomenon in terms of a way to communicate
7 to people, is simply our way of taking a lot of
8 information that was available to the public before
9 and assimilating it together and making it in a
10 relevant way that many people like to communicate
11 today through to be able to communicate.
12 But it's the same information that's
13 provided on the pack and so on for years and years.
14 It's just that it provides them access to the
15 underlying information, and they can go and study
16 this in greater detail because the power of the
17 Internet allows that to take place today.
18 Q. Mr. Szymanczyk, do you have evidence
19 that prior to Philip Morris's web site, which was

20 created, I believe, in November '98, that any pack
21 of, say, Marlboro contain this statement, "There is
22 an overwhelming medical and scientific consensus
23 that cigarette smoking causes lung cancer, heart
24 disease, emphysema, and other serious diseases in
25 smokers"? Have you ever seen a pack of Marlboro

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1 Szymanczyk
2 that said that before November '98?
3 MR. BLEAKLEY: Objection.
4 You can answer.
5 A. I'm not sure that would fit on a pack,
6 but there is a statement that essentially says
7 that. It says, "Smoking causes lung cancer, heart
8 disease, and emphysema."
9 Q. Do you know when the first such warning
10 label first appeared on a pack of Marlboro?
11 A. I can't tell you that exactly, no.
12 Q. Do you have any information to dispute
13 the fact that prior to 1984 no pack of Marlboro
14 cigarettes or any other Philip Morris pack of
15 cigarettes contained the statement that "Cigarette
16 smoking causes lung cancer"?
17 MR. SEXTON: Objection to form.
18 A. My understanding of this is that these
19 labels are mandated by Congress in a Federal
20 Labeling Act, and they tell us what they want on
21 the pack. The labels changed in 1984. Prior to
22 1984, there was a different warning, which I
23 believe is "Smoking is hazardous to your health,"
24 which was on that pack for many years. But that
25 language is dictated by Congress.

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1 Szymanczyk
2 Q. Were you not asked the question in
3 Florida on June 13th of the year 2000, a question
4 by Mr. Webb, "Tell the jury why did Philip Morris
5 put that statement on the web site," that statement
6 referring to 'an overwhelming medical and
7 scientific consensus' "that cigarette smoking
8 causes lung cancer, heart disease, emphysema, and
9 other serious diseases in smokers."
10 And your answer was, "We put it on the
11 web site because we wanted people to understand
12 that that was true, and that is important
13 information for them to know." And I have
14 highlighted what I have just read to you.
15 Can you confirm that you made that
16 statement.
17 MR. SEXTON: Objection.
18 A. Yes. And I think it's true that it's
19 important information for people to know.
20 Q. I just wanted to make sure that is still
21 your position.
22 Are you aware that on your web site it
23 is stated that, "Smokers are far more likely to
24 develop serious diseases, like lung cancer, than
25 nonsmokers"? And you were asked the question,

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1 Szymanczyk
2 "Does Philip Morris believe that that's a truthful
3 statement?" And your answer was "Yes, we do."
4 I ask you, is that still your belief on

5 September 7th, the year 2000? I didn't highlight
6 that part, but it's right under the first part
7 that's highlighted.
8 MR. SEXTON: Objection.
9 A. Yes.
10 Q. You made that statement?
11 A. Yes.
12 Q. Do you believe that to be true today?
13 A. Yes, I do.
14 Q. Do you recall that on the web site, the
15 statement is made on the Philip Morris web site,
16 "There is no safe cigarette"? Do you recall that?
17 A. Yes, I just read it.
18 Q. Philip Morris placed that statement on
19 the web site, did they not?
20 A. I believe that's correct.
21 Q. Do you know whether prior to November
22 1998 in any advertisement, such as Exhibit 2 or any
23 op-ed -- you know what an op-ed piece is, don't
24 you?
25 A. Why don't you explain.

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1 Szymanczyk
2 Q. A statement of principle about a
3 corporation, what they believe in, for example.
4 Prior to November 1998, did Philip
5 Morris ever place an advertisement, such as Exhibit
6 2 that I just showed you, in print media that
7 "There is no safe cigarette"?
8 MR. BLEAKLEY: The question is does he
9 know whether?
10 MR. MOTLEY: Yes.
11 Q. Do you know whether they did?
12 A. I do not.
13 Q. In 1997, Mr. Szymanczyk, did Philip
14 Morris make the decision to let the public health
15 community in this country speak with a single voice
16 to warn people about the health risks of smoking
17 without any interference or comment by Philip
18 Morris?
19 A. Well, in 1997, I believe we agreed with
20 certain members of Congress that there should be
21 but one voice on the subject of smoking and health,
22 and that was the public health authorities, and I
23 believe we have operated accordingly.
24 Q. In fact, you said the same thing, but in
25 one word, in Engle, and the answer to that question

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1 Szymanczyk
2 was yes; you did that in 1997, did you not?
3 A. I believe so, yes.
4 Q. And your company, to the best of your
5 knowledge, has followed that policy consistently
6 from the day that decision was made up to this day,
7 September the 7th of the year 2000, correct?
8 A. I believe that's correct.
9 Q. That is, again, an example of how you
10 are "as the buck stops here guy," I think you used
11 that expression in Engle, as the chief officer of
12 Philip Morris, you believe that those kinds of
13 things that we have just been describing are
14 consistent with your core principles that we talked
15 about earlier today, correct?

16 A. I believe they are consistent with the
17 mission that we have outlined that we should
18 pursue.
19 Q. In your web site, you make reference to
20 or make available to people who use that web site
21 specific reference to certain Surgeon Generals'
22 reports that they should go read and rely upon. Do
23 you recall that?
24 A. There is access to Surgeon Generals'
25 reports on the web site, that is correct.

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1 Szymanczyk
2 Q. You encourage the people who access your
3 web site to rely on those Surgeon Generals' reports
4 that you list on your web site in making their
5 decision about whether to smoke or not to smoke,
6 among other things, correct?
7 A. Well, I don't know that we specifically
8 referenced any individual Surgeon General's report.
9 We do make a statement in the web site that says to
10 consumers that they should rely on the public
11 health consensus regarding smoking in making
12 decisions to smoke.
13 Q. While she finds the web site itself, it
14 says -- I will hand you a copy of a hard copy.
15 It, in fact, makes reference to certain
16 Surgeon Generals' reports, does it not?
17 A. It sure does.
18 Q. One of the Surgeon Generals' reports
19 that you refer your readers to is the report of the
20 Surgeon General of 1979, is that not correct?
21 A. Yes, that's included.
22 Q. I am going to hand you this, sir, and
23 mark it as Exhibit 3.
24 MR. MOTLEY: I am afraid I don't have
25 extra copies, but I will give it to you

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1 Szymanczyk
2 first.
3 This will be Exhibit 3.
4 (Plaintiff's Exhibit 3, excerpts from
5 Surgeon General's report, marked for
6 identification, as of this date.)
7 Q. Mr. Szymanczyk, would you take a look at
8 that, please, sir.
9 A. Okay.
10 Q. Please read the whole thing, if you
11 would like, but the part I am going to ask you
12 about is a part that I have highlighted.
13 MR. KLEIN: While he is reading,
14 Mr. Motley, identify the document for the
15 record.
16 MR. MOTLEY: It's Exhibit 3, it's an
17 excerpt from the 1979 Surgeon General's
18 report.
19 A. What is your question?
20 Q. In the excerpt from the 1979 Surgeon
21 General's report that I have highlighted, is there
22 a discussion of the interaction between cigarette
23 smoking and exposure to asbestos?
24 A. It makes a statement about that.
25 Q. It deals with the interaction, correct?

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1 Szymanczyk
2 A. I suppose so. I don't know exactly what
3 it means.
4 Q. May I have it back, please, sir.
5 Number 5 says, "Smoking may act
6 synergistically with toxic agents found in the
7 workplace to cause a much more profound effect than
8 that anticipated simply by the separate influence
9 of the agent and smoking added together; for
10 example, cigarette smoking and exposure to asbestos
11 may interact synergistically to greatly increase
12 the risk of lung cancer."
13 I read that correctly, did I not?
14 A. I think you did.
15 Q. You are just not familiar with that
16 statement or that concept?
17 A. No, I am not.
18 Q. Are you aware that there was a Surgeon
19 General's report in 1985 that was devoted in its
20 entirety to the relationship between smoking and
21 exposure to toxic substances in the workplace,
22 especially asbestos?
23 A. No, I am not aware of that. That
24 precedes my time.
25 Q. Yes, I understand that.

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1 Szymanczyk
2 As a member of the general public, were
3 you aware of that, that in 1985 there was a Surgeon
4 General's report -- you were with which company in
5 '85?
6 A. I was with Proctor & Gamble.
7 MR. BLEAKLEY: Excuse me, Ron, can you
8 get us a copy of that Exhibit 3 here before
9 we leave today so we don't have to wait for
10 it.
11 MR. MOTLEY: Absolutely, absolutely.
12 We will do it on the lunch break.
13 Q. Were you as a citizen aware that in 1985
14 the Surgeon General of the United States issued a
15 report specifically entitled, "Cancer and chronic
16 lung disease in the workplace, the report of the
17 Surgeon General in 1985"? If you don't, that's
18 fine.
19 A. I don't recall that.
20 Q. And if you don't recall that, I take it
21 you wouldn't recall that it discusses the influence
22 of cigarette smoking on the disease called
23 asbestosis, is that fair?
24 A. No, I wouldn't know that.
25 Q. As you sit here today, do you know what

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1 Szymanczyk
2 asbestosis is? You don't?
3 A. Very superficially.
4 Q. What is it that you understand it to
5 mean?
6 A. I believe it's a lung disease associated
7 with asbestos. That's about as far as I can go.
8 Q. But you are unaware of how cigarette
9 smoking may exacerbate the effect of asbestos in
10 causing asbestosis?
11 MR. BLEAKLEY: Objection.

12 MR. SEXTON: Objection.
13 Q. If it does. As you sit here today, are
14 you aware of that?
15 A. From the point of view of the subject, I
16 know that we have scientists that review the
17 science on this and review what the current
18 knowledge is on this subject, and I am not aware
19 that there is, in fact, a proven synergy in this
20 particular area. But you could talk to a
21 scientist, and he can give you better information.
22 Q. Thank you, sir.
23 MR. MOTLEY: This will be number 4.
24 (Plaintiff's Exhibit 4, Complaint,
25 marked for identification, as of this date.)

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1 Szymanczyk
2 MR. MOTLEY: Exhibit 4, for the
3 record, is the Complaint filed by the State
4 of New York and Dennis Vacco, Attorney
5 General of the State of New York, for and on
6 behalf of the People of the State of New
7 York against Philip Morris and others on
8 August 26, 1997.
9 I just want to hand that to
10 Mr. Bleakley.
11 Q. My first question is, sir: Have you
12 seen this document prior to my handing it to you
13 today?
14 A. I don't believe I reviewed this
15 document.
16 Q. You were working in New York in August
17 '97, correct, for Philip Morris?
18 A. That's correct, yes.
19 Q. Earlier, I showed you where you made a
20 response to Mr. Webb about why you felt important
21 to change the way Philip Morris does business, and
22 one of the reasons was because of the allegations
23 of the various Attorneys General, correct?
24 A. Yes.
25 Q. And to be fair to you, I represented the

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1 Szymanczyk
2 State of New York, so if that makes any difference
3 to your answer.
4 On page 36, if you would kindly look at
5 that.
6 A. Okay.
7 Q. Number 98 down at the bottom of the
8 page. Actually, look at number 97, it's on page
9 36.
10 A. Number 97?
11 Q. Number 97, yes, sir. "The allegation is
12 made by the State of New York that defendants have
13 pursued a course of conduct and conspiracy of
14 deceit and misrepresentation against the public in
15 order to promote and maintain sales of tobacco
16 products and the profits derived therefrom to
17 shield themselves from having to pay the health
18 care costs of tobacco-related diseases and to shift
19 those costs to others, such as the State of New
20 York."
21 My question to you, sir, is: Without
22 reference to whether or not you knew this specific

23 claim was being made by the State of New York, were
24 you aware that the State of New York had filed a
25 claim seeking reimbursement for certain Medicaid

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1 Szymanczyk

2 costs?

3 A. I believe most states had, and I believe
4 the State of New York was one of them.

5 Q. At paragraph 98, the Attorney General
6 states, "Defendants' conspiracy consists of two
7 strategies; first, they agreed to represent falsely
8 to the public that they were creating a new
9 unbiased, and therefore, trustworthy source to
10 answer questions about smoking and health; and
11 second, they counted on the public's acceptance of
12 their representations of such trustworthiness to
13 misrepresent, suppress, distort, and confuse the
14 facts about the health dangers of tobacco products,
15 including nicotine addiction."

16 Were you aware, sir, generally that
17 allegations such as that was made by the Attorney
18 General of New York?

19 A. I was aware that was a general
20 allegation that was made in lawsuits like this.

21 Q. Are you aware, sir, that Philip Morris
22 and other entities disbanded something called the
23 Council for Tobacco Research and agreed to revoke
24 their charter in the State of New York?

25 A. As part of the Master Settlement

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1 Szymanczyk

2 Agreement, is that what we are talking about?

3 Q. As part of an agreement that was later
4 incorporated into the 1998 Master Settlement
5 Agreement.

6 A. Yes. I am aware that as a part of the
7 1998 Master Settlement Agreement the Tobacco
8 Institute was disbanded.

9 Q. As was the Council for Tobacco Research,
10 correct?

11 A. That is correct.

12 Q. On page 41, sir.

13 A. Okay.

14 Q. Item number 113. This refers to a 1954
15 document now. I doubt seriously that you were
16 reading documents back in 1954, unless your mother
17 made you read them. So I don't in any way
18 insinuate that you are familiar with this.

19 The allegation is made by the Attorney
20 General of New York that in 1954, Philip Morris
21 officials and other officials of tobacco companies
22 stated that, "Salesmen in the industry are
23 frantically alarmed, that the decline in the
24 tobacco stock on the Stock Exchange market has
25 caused grave concern."

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1 Szymanczyk

2 Were you aware that --

3 A. Where are you reading?

4 Q. Paragraph 113.

5 A. I see that.

6 Q. Were you broadly aware that the Attorney
7 General of New York had made the allegation that

8 beginning in 1954 the tobacco companies had engaged
9 in a group effort to downplay the hazards of
10 cigarette smoking?

11 MR. BLEAKLEY: Was he aware when?

12 MR. MOTLEY: Was he aware that the
13 allegation was made in '97 that in 1954 the
14 cigarette companies in the United States had
15 joined together in an effort to try to
16 reassure the public that cigarette smoking
17 was not harmful.

18 MR. BLEAKLEY: What I am asking is
19 whether you want to know whether he is aware
20 of it now, or whether he was aware of it in
21 1997?

22 MR. MOTLEY: Let's try '97 first.

23 Q. Were you aware that the allegation was
24 made?

25 A. I am aware of an allegation of a

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1 Szymanczyk
2 conspiracy. I can't tell you that I am aware of
3 specific dates, times and places.

4 Q. In fact, one of the things that Philip
5 Morris and others agreed to in the Master
6 Settlement Agreement was not to engage in a
7 dialogue with the smoking consumers to try to
8 downplay the hazards of cigarettes, correct?

9 MR. BLEAKLEY: Objection to form.

10 A. I don't remember that as an element of
11 the Master Settlement Agreement. Again, I think,
12 as I mentioned a little while ago, we agreed with
13 certain members of Congress, which is a separate
14 issue from the MSA, that there should be but one
15 voice on the subject of smoking and health, and
16 that that should be the public health authority.

17 Q. I will rephrase my question.

18 It's true then that Philip Morris made a
19 promise to certain members of Congress not to
20 dispute the public health community's assertions
21 about the harmfulness of cigarettes, correct?

22 A. Again, I think I prefer to state what I
23 said. I believe the accurate statement of what we
24 agreed to -- rather than to use your words, I would
25 rather use my words, which is -- I want to be

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1 Szymanczyk
2 specific.

3 Q. I understand.

4 A. We agreed with certain members of
5 Congress that there should be but one voice on the
6 subject of smoking and health, and that that should
7 be the public health community; that the public
8 should hear the messages from the public health
9 community, from them or at least in their words via
10 other sources.

11 Q. Are you aware that prior to making that
12 commitment to members of Congress that in the mid
13 1990s Philip Morris had taken the public position
14 that it was not known whether or not cigarettes
15 caused lung cancer in human beings?

16 MR. BLEAKLEY: Objection to form.

17 You can answer.

18 A. I am not aware of what you are

19 referring to.
20 Q. Mr. Szymanczyk, are you aware that
21 Mr. Webb prior to your testifying in the Engle case
22 told the jury in the Engle case that you were going
23 to tell the jury candidly that he wondered whether
24 it was something he, meaning you, should do when
25 you made the decision to join Philip Morris --

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1 Szymanczyk
2 MR. KLEIN: Objection.
3 Q. -- because he believed that selling
4 cigarettes is a controversial business, and he,
5 meaning you, is going to tell you that he believed
6 then and he believes now that it is a dangerous
7 product. That's what he believes.
8 Do you recall, or are you aware that
9 Mr. Webb made that statement?
10 A. I wouldn't have been there when he made
11 the statement.
12 MR. BLEAKLEY: Objection. Let me put
13 an objection on the record.
14 Q. Is that a true statement, that you had
15 some concerns when you joined Philip Morris because
16 you believed it to be a controversial business?
17 A. I believe I articulated that in my
18 testimony, that when I joined Philip Morris, I had
19 not contemplated being in the tobacco business. I
20 came from a background in the soap business, which
21 is reasonably not controversial.
22 And so, I had to give some thought to
23 that subject, because I wasn't sure that that was a
24 business that I wanted to go into. But ultimately,
25 I did determine that I thought Philip Morris was a

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1 Szymanczyk
2 good company; and that it was a responsible thing
3 for me to do. Just because it was a different
4 business, controversial business, doesn't mean that
5 it shouldn't be run by responsible people, and I
6 feel that I am a responsible businessman.
7 Q. Are you aware that Mr. Webb told the
8 jury that you would tell the jury that you thought
9 the reputation of Philip Morris was enormously
10 declining in the business and investment community,
11 and that you were going to tell the jurors that you
12 thought that you had a mandate as CEO to do
13 something about it?
14 MR. BLEAKLEY: Objection.
15 Q. Are you aware that Mr. Webb told the
16 jury that?
17 A. I am not aware specifically what he told
18 the jury.
19 MR. BLEAKLEY: Objection.
20 Q. Is what he said true, that you had that
21 concern, the reputation -- we are talking about
22 when you became CEO of Philip Morris -- that Philip
23 Morris was enormously declining in the business and
24 investment community, and you felt that you had a
25 mandate to do something about it? Is that a true

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1 Szymanczyk
2 statement?
3 A. Are you asking me if what his specific

4 statement was was true, or are you asking me a
5 specific question about how I feel about that
6 subject?

7 Q. What he described about your feelings,
8 is that true?

9 A. Let me see it.

10 Q. Sure. You can read the whole thing,
11 Mr. Szymanczyk. I don't want you to feel like it's
12 out of context at all.

13 A. I guess I wouldn't have said it exactly
14 in those words. I don't think there is anything
15 totally inaccurate about that statement.

16 But my belief was, when I became CEO, as
17 I already stated, there was a significant amount of
18 information and evidence that pointed to the fact
19 that people were dissatisfied with the way they
20 viewed their perceptions of how a tobacco company
21 was being operated, and that that certainly had a
22 negative impact on the company's reputation in the
23 public, in the business community, in the stock
24 market, in all those kinds of places.

25 I believed that that was clearly an

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1 Szymanczyk
2 issue, and that if you are going to operate a
3 company in this society, it has to be viewed by
4 society as consistent with what they believe you
5 should be doing, and we need to do that.

6 Q. Mr. Webb went on to say on that same
7 page that you, Mr. Szymanczyk, were going to tell
8 the jurors that it was your view that he believed
9 that Philip Morris was out of alignment with what
10 society expected of a business, and that society
11 had a right to expect more from a company,
12 particularly one selling a dangerous product, than
13 Philip Morris was giving.

14 The first question is, did I read that
15 correctly?

16 MR. BLEAKLEY: Objection.

17 A. I believe you did.

18 Q. Did I read that correctly?

19 A. I believe you did.

20 Q. In fact, did you have that belief?

21 A. Well, I -- again, I would describe it a
22 bit differently than he did. I believe that the
23 perception society had was, true or not, that we
24 were out of alignment with what their expectations
25 were, and I believe their expectations were

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1 Szymanczyk
2 evolving, too, as more and more information became
3 available to them on the subject.

4 So I think as I approached it, my
5 feeling was that we needed to move ourselves into
6 that alignment.

7 Q. Into alignment of what society expected
8 of a business?

9 A. That's right, of this business.

10 MR. MOTLEY: Would you mark this as 5,
11 please.

12 (Plaintiff's Exhibit 5, New York
13 Times, marked for identification, as of this
14 date.)

15 Q. As a citizen, Mr. Szymanczyk, I assume
16 you are familiar with the current controversy
17 surrounding Firestone tires and certain Ford
18 vehicles, are you not?

19 A. Well, only from what I have read in the
20 newspapers.

21 Q. I agree with you, everything you read in
22 the newspaper is not necessarily accurate.

23 Did you have occasion to read the lead
24 story in The New York Times of today, September the
25 7th, the year 2000?

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1 Szymanczyk

2 A. No, I did not.

3 Q. It's reported that, "Officials of Ford
4 Motor Company and of the parent, the chief
5 executive of Bridgestone/Firestone, the American
6 unit of Bridgestone of Japan, read an apology to
7 certain United States Senators." And then it
8 reports, "Republicans and Democrats alike refuse to
9 accept Firestone's apologies or each company's
10 efforts to blame the other. Members of Congress
11 accuse both companies of having at least blithely
12 ignored public safety and perhaps of conspiring to
13 do so. Ford and Firestone had, at a minimum, a
14 moral obligation to make sure the products they
15 sell to the American public and other people in
16 other countries are safe, said Senator Richard
17 Shelby, Republican of Alabama."

18 My question to you is, I know you are
19 not selling Firestone tires and Ford products, is
20 the core mission statement that you developed for
21 your company and that you have attempted to your
22 best to implement consistent with the concept that
23 a manufacturer of a product has a moral obligation
24 to make sure that the products they sell to the
25 American public and other people in other countries

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1 Szymanczyk

2 are safe? Do you agree with that or disagree with
3 that?

4 MR. BLEAKLEY: Objection.

5 A. Relative to the tobacco business, I
6 couldn't make that statement, because there is no
7 safe cigarette. And I think the obligation -- I
8 don't think you can make a correlation between
9 tires and cigarettes. I wouldn't attempt to do
10 that.

11 I think what is important is that we
12 want to make sure people make an informed decision,
13 and that we do everything we can within the
14 boundaries of science to try to reduce the risks
15 associated with the product.

16 I don't know if we will ever be able to
17 reduce it to the degree that there is no risk or
18 not, we are working very hard on that, and that we
19 keep kids from smoking. Those are the things that
20 I think are the obligation that would relate to the
21 tobacco business.

22 I don't think that I can make a
23 correlation to that statement, because it's built
24 around a wholly different set of assumptions of
25 another business.

1 Szymanczyk

2 Q. Let me ask you this question: Did you
3 ever meet a gentleman named -- and if I
4 mispronounce his name, I apologize -- Hamish
5 Maxwell?

6 A. Hamish Maxwell.

7 Q. Do you remember him, sir?

8 A. Yes. He was the chairman and chief
9 executive officer of Philip Morris Companies at the
10 time that I started to work for Philip Morris
11 U.S.A.

12 Q. Do you remember the exact date you
13 started to work for Philip Morris U.S.A.?

14 A. Well, I think it was October 27th of
15 1990, but it was at the end of October 1990.

16 Q. Did you know Mr. Alex Holtzman?

17 A. I do not recall that name, no.

18 MR. MOTLEY: This will be number 6.

19 (Plaintiff's Exhibit 6, memorandum,
20 marked for identification, as of this date.)

21 MR. KLEIN: Is this a Bliley document?

22 MR. MOTLEY: Yes, this is a Bliley
23 document. All your objections are
24 preserved. I want to apologize for not
25 stating that. I'm almost positive this is a

1 Szymanczyk

2 Bliley document.

3 Q. Exhibit 6 is dated April 13, 1990 from
4 Alex Holtzman, who I asked you to assume was an
5 official of the legal department of Philip Morris;
6 two, Mr. Hamish Maxwell was president or CEO of
7 Philip Morris in 1990.

8 The first question is, have you ever
9 seen this document?

10 A. No.

11 Q. It reads as follows: "At your
12 suggestion, I have tried to think of some
13 initiatives the company might take to deal with the
14 worsening climate of opinion affecting the tobacco
15 business. A step which might be constructive would
16 be to re-examine our responsibilities to our
17 consumers, and to conclude that certain actions on
18 our part are warranted to ensure that smokers are
19 fully aware of the state of medical opinion about
20 smoking and health. The tobacco industry has been
21 charged with interfering with the consumer's
22 perception of smoking risks by disputing or
23 distorting the scientific evidence in its public
24 statements. We can undertake to deal with this
25 criticism by adopting the following platform."

1 Szymanczyk

2 First of all, I must ask you for the
3 record, did I read the first two paragraphs
4 correctly?

5 A. I think you did.

6 MR. BLEAKLEY: Let me just stop you
7 for one second. I want to make sure the
8 record is clear.

9 This is under seal?

10 MR. MOTLEY: Correct.

11 MR. BLEAKLEY: Including in the
12 Blankenship case?
13 MR. MOTLEY: Correct.
14 Q. Number one, this is what he is
15 suggesting to the president that they should do,
16 "The company's position is that information about
17 smoking and health should come from medical and
18 public health authorities and should reach the
19 public undiluted by any challenges from the tobacco
20 companies."
21 And that's in effect what you did when
22 you took over as CEO in 1997, correct, the
23 commitment you made to Congress?
24 MR. BLEAKLEY: Objection to form.
25 You can answer.

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1 Szymanczyk
2 A. The commitment that I made to Congress
3 said that there should be but one voice.
4 Q. And that's what Mr. Holtzman was
5 recommending to Mr. Hamish Maxwell back in 1990,
6 correct?
7 A. It would appear so, but I don't know,
8 but that's what it would appear to be.
9 Q. Number 3, "In company communications to
10 customers and the public at large, we shall make no
11 effort to dispute or contradict statements by
12 medical authorities concerning the effects on human
13 health of the use of our products. The only
14 exception to this policy shall be when contesting
15 liability in courts of law and in maintaining our
16 position that environmental tobacco smoke does not
17 harm the normal healthy nonsmoker."
18 Now, with respect to the first sentence
19 down to where it says "the only exception," in
20 fact, in 1998, your company agreed that you would
21 not make any effort to dispute or contradict
22 statements by medical authorities concerning the
23 effects on human health of the use of your
24 products, is that not correct?
25 MR. BLEAKLEY: Objection to form.

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1 Szymanczyk
2 You can answer.
3 A. Well, again, I will refer to the
4 statement that I made.
5 Q. I understand, "speak with one voice."
6 A. I don't mean to be difficult. I simply
7 want to make sure I am conveying the language as I
8 understand the use, rather than somebody else's.
9 Q. But the gist of what Mr. Holtzman is
10 suggesting to Mr. Maxwell is, in fact, what you did
11 in 1998, the essence --
12 A. The company did.
13 Q. The company did at your direction?
14 A. Actually, that agreement with Congress,
15 I believe, was entered into before I became CEO.
16 Q. You were COO?
17 A. But I was certainly involved with the
18 company at that time.
19 Q. And you agreed with that?
20 A. I agreed with it.
21 Q. And you still do?

22 A. I still do.
23 Q. On the second page, Mr. Holtzman suggest
24 to Mr. Maxwell that, "The company will encourage
25 its customers to become informed of all information

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1 Szymanczyk
2 relating to possible effects on their health of its
3 products."

4 In fact, you have gone to the
5 extraordinary length of suggesting where the
6 consumer can go and look for this information on
7 your web site, haven't you?

8 MR. BLEAKLEY: Objection to form.

9 A. We have provided the consumer with
10 really all I believe to be the relevant smoking and
11 health information on our web site.

12 Q. Under the next paragraph, he suggest
13 that, "On the issue of product improvement," you
14 see that, number 1, "product improvement"?

15 A. Yes.

16 Q. "To the extent possible consistent with
17 our technical ability, we shall include in our
18 product lines an increasing number of products
19 which have been modified in a direction considered
20 by medical authorities to be," in quotes, "safer."

21 And, in fact, sir, your company under
22 your direction is working on a product called
23 Accord that you hope will reduce the risk of
24 smoking, correct?

25 MR. BLEAKLEY: Objection.

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1 Szymanczyk

2 A. That and among others, correct.

3 Q. And then they go on to say, "Protection
4 of children. The company intends to review the
5 content and placement of cigarettes advertisements
6 with a view to ensuring that they do not unduly
7 appeal to children."

8 And, in fact, in the advertisement that
9 I showed you taken out in the year 2000, you point
10 out to the public all you have done to try to
11 assure that children are not exposed to cigarette
12 advertising, because you believe that cigarettes
13 should be an adult custom, correct?

14 MR. BLEAKLEY: Objection.

15 A. That's correct.

16 Q. And that, again, was suggested to the
17 president of the company on April 13, 1990,
18 according to this memo?

19 MR. BLEAKLEY: Objection. The
20 document speaks for itself.

21 Q. Correct?

22 A. That I don't know. I do know that
23 that's what it says in this memo.

24 Q. And it has a stamp at the top right of
25 the document, doesn't it, saying "Received April

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1 Szymanczyk

2 13, 1990, Hamish Maxwell"? Do you see that?

3 A. It does say that.

4 Q. Mr. Szymanczyk, are you familiar with a
5 movie called "A Class Action"? Gene Hackman played
6 it. It was about an automobile that had been

7 designed with a defective gas tank.
8 A. I don't believe I have seen that movie.
9 MR. BLEAKLEY: It wasn't a big hit.
10 Q. Are you familiar, sir, with the
11 controversy of the design of the gas tank of the
12 Ford automobile called the Pinto, P-I-N-T-O?
13 A. I have heard of it. I am not familiar
14 with the details.
15 MR. MOTLEY: Mark this as 7.
16 (Plaintiff's Exhibit 7, memorandum,
17 marked for identification, as of this date.)
18 Q. I would take it as a given, sir, that
19 you haven't looked at the documents of
20 other competitors --
21 MR. BLEAKLEY: Do you have another
22 copy?
23 MR. MOTLEY: I don't. I apologize. I
24 don't know why we don't have three copies.
25 MR. CONLON: Same objections that we

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1 Szymanczyk
2 discussed earlier reserved for this
3 document, is that right, Mr. Motley?
4 MR. MOTLEY: Yes, sir, that's correct,
5 because I believe this to be a Bliley
6 document.
7 While they make those copies, I will
8 go on to something else.
9 MR. MOTLEY: This will be number 8.
10 (Plaintiff's Exhibit 8, editorials,
11 marked for identification, as of this date.)
12 Q. My first question to you, sir, is this
13 document is dated February 18, 1998, it's an
14 editorial in The Journal of the American Medical
15 Association. I doubt seriously that you are a
16 subscriber yourself of The Journal of the American
17 Medical Association.
18 But is it not true that Philip Morris's
19 research and development department subscribes to
20 The Journal of the American Medical Association?
21 A. I don't know that for a fact, but I
22 suspect we do.
23 Q. Your job description on February 18,
24 1998 with Philip Morris was what, sir?
25 A. I was president and chief executive.

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1 Szymanczyk
2 Q. If you look at the third page, page 552,
3 of this editorial, you will see at the top right
4 the names of the authors of this editorial.
5 Do you see that?
6 A. Is this where you are referring to?
7 Q. Yes, sir.
8 A. Yes.
9 Q. Do you recognize the name C. Everett
10 Koop, M.D.?
11 MR. BLEAKLEY: Objection.
12 A. Yes.
13 Q. Do you know who Dr. Koop is or what his
14 position was at one time?
15 A. He is a former Surgeon General.
16 Q. Former Surgeon General of the
17 United States?

18 A. Yes.
19 Q. Do you recognize the name David C.
20 Kessler?
21 A. Yes, I do.
22 Q. Do you recognize that name as being the
23 former director of the United States Food and Drug
24 Administration?
25 A. Yes, I do.

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1 Szymanczyk
2 Q. Do you recognize the name of George D.
3 Lundberg, M.D.?
4 A. No, I do not.
5 Q. If you would kindly turn back to page 1.
6 In the second column, sir, right before the block
7 that says "See also page 511 and page 516," it's a
8 paragraph that reads, "For years, the tobacco
9 industry."
10 A. Yes.
11 Q. "Drs. Koop, Kessler and Lundberg state
12 in this editorial that for years the tobacco
13 industry has marketed products that it knew caused
14 serious disease and death, yet it intentionally hid
15 this truth from the public, carried out a deceitful
16 campaign, designed to undermine the public's
17 appreciations of these risks, and marketed its
18 addictive products to children. The industry long
19 ago knew that nicotine was addictive, but kept its
20 findings secret, and consistently denied the fact,
21 even as overwhelming evidence to the contrary
22 eventually emerged."
23 The first question, did I read that
24 correctly?
25 A. I believe you did.

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1 Szymanczyk
2 Q. Second question, as CEO and president of
3 Philip Morris, did anybody in the research and
4 development department or in the legal department
5 bring this editorial to your attention?
6 A. No, they did not.
7 Q. Would you agree with me having read this
8 for the first time that is a serious claim to make
9 about the cigarette companies and their conduct in
10 past years even before you joined the cigarette
11 industry in 1990?
12 MR. BLEAKLEY: Objection.
13 Q. It's pretty strong words?
14 MR. BLEAKLEY: Objection.
15 A. Well, that's generally the claim that
16 we see in the litigations that's filed against
17 Philip Morris.
18 Q. This is a claim made by a former Surgeon
19 General and the head of the Food and Drug
20 Administration?
21 A. I understand that.
22 Q. Not by lawyers, correct?
23 A. I understand that.
24 Q. And then below the bold "See also pages
25 511 and 516," Drs. Koop and Kessler say, "By these

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1 Szymanczyk
2 actions, the tobacco makers have shown themselves

3 to be a rogue, R-O-G-U-E, industry unwilling to
4 abide by ordinary, ethical business rules and
5 social standards. Other businesses operate
6 differently."

7 They use an example much like what we
8 were talking about earlier.

9 "For example, design defects in a motor
10 vehicle are unintentional. When they are
11 discovered, steps are taken to correct them;
12 nevertheless, such manufacturers are held liable
13 for these mistakes."

14 First question is, did I read those
15 excerpts correctly?

16 MR. SCHROEDER: Objection.

17 A. I believe you did.

18 Q. Second question, I take it this sentence
19 accusing your company, among other cigarette
20 companies, of being a rogue industry was not
21 brought to your attention as CEO in 1998 by anyone
22 in the company --

23 MR. BLEAKLEY: Objection.

24 Q. -- correct?

25 MR. BLEAKLEY: Objection.

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1 Szymanczyk

2 A. No, I don't recall seeing this.

3 Q. Third question, that's a pretty strong
4 indictment of your company, to be called a rogue
5 industry, correct?

6 MR. BLEAKLEY: Objection.

7 A. Well, it's certainly not what I would
8 consider to be a positive comment.

9 Q. Mr. Szymanczyk, have you not tried to,
10 sir -- and, on a personal level, I applaud your
11 efforts, I know that won't go into the records.
12 This is not a trick question.

13 Your core mission statement and what you
14 have tried to do since you have been at the helm of
15 this corporation has been to change its perception
16 among public health officials of the conduct of the
17 company in the past, and to operate more openly
18 with public health officials, has it not?

19 MR. BLEAKLEY: Objection.

20 A. Well, our objectives, as I have
21 articulated them -- again, I prefer to use my
22 words.

23 Q. Use your words.

24 A. Our objectives, as I have articulated
25 them, are well described in the mission that we

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1 Szymanczyk

2 have, and that would include working with public
3 health authorities.

4 We are not always going to agree. I
5 mean, this is science, and there are different
6 opinions in science. But working with public
7 health authorities and making sure that we do
8 everything we can to keep kids from smoking; to
9 make sure that people have good information, and
10 new information comes in all the time; and to see
11 that that information is available to them; and to
12 try to reduce the risk of the product, knowing that
13 the product may always carry with it risks.

14 And I don't agree that this is like a
15 motor vehicle where you are intentionally designing
16 it to be flawed. It is. Cigarettes were invented
17 by Philip Morris. They have been around for a long
18 time, and they carry with them risks, and we are
19 trying to lower those risks.

20 Q. You would be very disappointed with your
21 activities as CEO of Philip Morris if five years
22 from now a former Surgeon General and a former head
23 of the FDA said, despite the promises of Philip
24 Morris from 1998 forward, they still are a rogue
25 industry? You would be disappointed to read that,

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1 Szymanczyk
2 wouldn't you?

3 MR. BLEAKLEY: Objection.
4 You can answer.

5 A. They may say that, but yes, I would be
6 disappointed, because I certainly am doing my level
7 best to see that we run this business in a
8 responsible way.

9 Q. And, in fact, you have recently invited
10 former critics, members of the public health
11 community, to contribute to Philip Morris's efforts
12 to reduce the risk of cigarettes, have you not?

13 A. What are you referring to? I am not
14 sure what you are referring to.

15 Q. Are you aware that Philip Morris has
16 reached out to members of the public health
17 community and asked them to assist you in
18 developing less risky products?

19 A. Well, we are working with a number of
20 institutions outside the company in various
21 scientific endeavors related to reducing the risk
22 of the product, as well as working with some other
23 public health authorities, like the IOM, for
24 example, on trying to determine as we reduce risk
25 of products if we are successful in doing that; or

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1 Szymanczyk
2 actually, I think a better way to describe it is
3 taking smoke constituencies out of the product that
4 the public health community has deemed as harmful,
5 what do we say to the public, how does that get
6 communicated, and what's the appropriate way to
7 talk to people about that.

8 And I think that's something that the
9 public health authorities and the FDA need to help
10 us with. But I don't know exactly what you are
11 referring to.

12 Q. I will show it to you when we get off a
13 lunch break.

14 MR. MOTLEY: This will be number 9, I
15 believe.

16 (Plaintiff's Exhibit 9, memorandum,
17 marked for identification, as of this date.)

18 MR. SEXTON: This is a Bliley document?

19 MR. MOTLEY: Yes, I believe so.

20 MR. SEXTON: Mr. Motley, is Exhibit 9 a
21 September 9, 1988 memo from Charles Wall?

22 MR. MOTLEY: Yes, it is, sir.

23 MR. SEXTON: There is a Bliley
24 objection on this. I would like to make an

25 independent objection, that this is clearly

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1 Szymanczyk
2 attorney-client communication and also work
3 product, and I would object to its use on
4 that basis.

5 MR. MOTLEY: In the Falise case, those
6 kinds of objections are reserved to the time
7 of trial.

8 And if I didn't say so at the start,
9 we certainly would agree that all
10 objections, say to form, plus the Bliley
11 objections, are reserved for trial. You
12 wouldn't be waiving anything.

13 MR. BLEAKLEY: I thought that was
14 clear, objection to privilege will be
15 decided by the Court if and when you offer
16 the document.

17 MR. MOTLEY: Absolutely, absolutely.

18 MR. BLEAKLEY: In addition to this
19 portion of the testimony and this exhibit
20 being sealed.

21 MR. MOTLEY: Everything that's related
22 to the document, you are correct.

23 Q. First of all, let me orient you, you
24 were not with Philip Morris in September 1988,
25 correct?

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1 Szymanczyk

2 A. No, I was not.

3 Q. You see that this is a memo purportedly
4 written by Charles R. Wall?

5 A. That's correct.

6 Q. Do you know Mr. Charles R. Wall today?

7 A. I do.

8 Q. What is his position with Philip Morris
9 today?

10 A. He is general counsel for Philip Morris
11 Companies, Incorporated.

12 Q. If you would, sir, look at page 2. In
13 the third paragraph starting with the word "It
14 was," "It was pointed out that the pre-1966
15 advertising, especially from the early 1950s, is
16 inconsistent with our position that we were doing
17 everything possible to address the scientific
18 claims. The ads might lead one to believe that we
19 were, in fact, downplaying all of the scientific
20 claims, and at the same time stressing to the
21 consumers that our products really were quote:
22 'safer,' unquote than competitors'. Webber said
23 that he was very perplex on how to handle the ads,
24 and thought that you could do one of five things,"
25 and then he lists those five things.

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1 Szymanczyk

2 My question to you, sir, is: When you
3 were in marketing with Philip Morris when you first
4 joined the company, did you ever have occasion to
5 look at the pre-1966 advertisements of Philip
6 Morris in the print media?

7 MR. BLEAKLEY: Objection.

8 A. No. I may have seen an ad, but I have
9 never reviewed that or studied it.

10 Q. Have you ever heard it said about an ad
11 words to the effect, "not a cough in a car load"?
12 A. I don't recall that.
13 Q. Since you have been CEO of Philip
14 Morris, have you had occasion for anyone to bring
15 to you any of the pre-1966 ads that were described
16 in this memo the way this paragraph describes it?
17 MR. BLEAKLEY: Objection.
18 A. I don't have a recollection to that.
19 MR. MOTLEY: I believe we are about
20 out of time on this tape.
21 While this is a little quicker than I
22 thought, do you want to take a lunch break,
23 and if so, how long would you like, or he
24 can change the tapes and we can go forward?
25 MR. BLEAKLEY: Why don't we change the

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1 Szymanczyk
2 tape and continue until 12:30.
3 Q. That's perfectly fine. Is that fine
4 with you?
5 A. We can go until 12:30.
6 THE VIDEOGRAPHER: The time is 12:03
7 p.m. This concludes tape number 1 of the
8 videotaped deposition of Mr. Mike
9 Szymanczyk.
10 MR. MOTLEY: This will be number 10.
11 (Plaintiff's Exhibit 10, The Journal
12 of the American Medical Association, marked
13 for identification, as of this date.)
14 THE VIDEOGRAPHER: The time is 12:06
15 p.m. This begins tape number 2 of the
16 videotaped deposition of Mr. Mike
17 Szymanczyk.
18 MR. BLEAKLEY: Let's just put on the
19 record that this is a Bliley document
20 subject to all the agreements and
21 stipulations.
22 MR. MOTLEY: This is a Bliley document
23 with all the stipulations and reservation of
24 rights.
25 Q. I will represent to you that this is a

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1 Szymanczyk
2 Brown & Williamson-British American Tobacco
3 document, and I don't suggest to you you would have
4 had any reason to read it, but I assume you have
5 never seen it before?
6 A. I don't believe I have.
7 Q. It starts off saying, "New strategy on
8 smoking and health" -- and I ask you to assume this
9 document is dated 1980.
10 A. I don't see a date.
11 Q. I understand that. I just ask you to
12 agree from the privileged logs that they have
13 identified that this is a 1980 document.
14 A. Okay.
15 Q. And then you see the "causation
16 concession" statement there, sir?
17 A. I see those words, yes.
18 Q. "The most significant recommendation
19 from a legal standpoint is predictably the author's
20 proposal that B.A.T., quote: "Move our position on

21 causation to one which acknowledges the probability
22 that smoking is harmful to a small percentage of
23 heavy smokers." And then skip down to where he
24 says, "The legal disadvantages." Are you following
25 me?

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1 Szymanczyk
2 "The legal disadvantages to this
3 position could possibly be so great as to
4 effectively counter the author's objective, which
5 is to become strong in tobacco. The grave legal
6 disadvantages are set out below; number one, to
7 admit that smoking causes death and disease will
8 most certainly enlarge Brown & Williamson's
9 liability to consumers."
10 Now, Mr. Szymanczyk, in 1998, your
11 company made the decision to place on its web site
12 information for consumers in which it is stated
13 that the overwhelming medical and scientific
14 consensus is that, in fact, cigarette smoking
15 causes lung cancer, correct?
16 MR. BLEAKLEY: Objection.
17 A. That information is on our web site,
18 yes, it is.
19 Q. If you would kindly turn over to the
20 third page, paragraph 4. "If we admit that smoking
21 is harmful to," quote: Heavy, end of quote,
22 "smokers, do we not admit that British American
23 Tobacco has killed a lot of people each year for a
24 very long time; moreover, if the evidence we have
25 today is not significantly different from the

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1 Szymanczyk
2 evidence five years ago, might it not be argued
3 that we have been," quote: Willfully, end of
4 quote, "killing our customers for this long period.
5 Aside from the catastrophic civil damage and
6 government regulation which could flow from such an
7 admission, I foresee serious criminal liability
8 problems. You are, of course, aware of the recent
9 effort by a local prosecutor to convict the Ford
10 Motor Company of a crime arising out of the
11 defendant's alleged willful misdesign of the gas
12 tank on the Pinto car. I fear the adoption of the
13 new strategy would give a prosecutor a much
14 stronger case against Brown & Williamson."
15 The first question is, did I read that
16 correctly?
17 A. I think you did.
18 Q. Second, you have never seen that before?
19 A. No, I have not.
20 Q. Third question, sir, are you aware of
21 any criminal investigations currently underway
22 against any person at Philip Morris Corporation?
23 MR. BLEAKLEY: Objection.
24 MR. SEXTON: Objection.
25 A. I am not, no.

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1 Szymanczyk
2 Q. Have you ever been yourself the subject
3 of a grand jury inquiry?
4 A. Not to my knowledge.
5 Q. And I didn't mean to suggest that you

6 had been.
7 MR. MOTLEY: The Pinto document, for
8 the record, so there won't be any confusion,
9 about which we just had discussion is
10 Exhibit number 7, not number 10.
11 We are now going to look at Exhibit
12 number 10.
13 Q. On July 19, 1995, what was your position
14 with Philip Morris, if you can recall?
15 A. July 19th of 1995?
16 Q. Yes, sir.
17 A. I believe I was senior vice president of
18 sales.
19 Q. Senior vice president of sales?
20 A. I think that's correct.
21 Q. You may want to open up and look at page
22 256, if you don't mind.
23 A. Okay. 256?
24 Q. Yes, sir. The first question is, have
25 you ever seen this particular editorial by the

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1 Szymanczyk
2 Board of Governors of The American Medical
3 Association?
4 A. No.
5 Q. This is entitled, "The Brown &
6 Williamson documents, where do we go from here?"
7 I am going to read this, and you tell me
8 if I read this correctly, "There is a massive body
9 of evidence derived from many scientific
10 disciplines that tobacco is addictive and kills
11 smokers. Up to half of those who continue to smoke
12 cigarettes will die prematurely from diseases
13 caused by smoking, half of these deaths occurring
14 in middle-aged. Peto, et al have calculated that
15 of the 1.25 billion people now living in developed
16 countries, 250 million will, if present tobacco
17 consumption patterns are maintained, die from
18 tobacco. With three million deaths worldwide each
19 year currently due to tobacco use, the consequences
20 of tobacco to the public health have been and will
21 continue to be staggering, and the importance of
22 bringing this hazard under control is
23 correspondingly great."
24 Mr. Szymanczyk, has anyone ever brought
25 to your attention in any form the statement in this

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1 Szymanczyk
2 editorial, that there are three million deaths
3 worldwide each year currently due to tobacco usage?
4 MR. BLEAKLEY: Objection.
5 A. No. I have heard statements relative to
6 the United States. I don't believe I have heard
7 relative to worldwide.
8 Q. You have heard relative to the
9 United States what number that die?
10 A. Typically, I think the number used is
11 400,000.
12 Q. As part of your new mission for Philip
13 Morris, you are dedicated to try and develop
14 products that are less risky and, therefore, harm
15 less people, correct?
16 A. The objective is to try to take the

17 science as best as it's known today.
18 Let me explain something here. I think
19 it's important to understand this. Since we don't
20 know the scientific series of events that go from a
21 constituent or a combination of constituents of
22 smoke that comes from a cigarette to change the DNA
23 in the cell of a human body makes it difficult to
24 determine what changes to make in the product in
25 order to reduce the risk or eliminate the risk.

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1 Szymanczyk
2 So what we operate on today is the best
3 science available, which is the public health
4 community's feeling that certain constituencies in
5 smoke that have been determined to be carcinogens
6 or potential carcinogens, if we can reduce them
7 dramatically or remove them, they may have a
8 bearing in reducing harm. That's what the
9 objective is, to reduce harm.
10 Q. And so, your company under your
11 leadership has taken the step to do everything they
12 can based on the science that's currently available
13 to you to try to produce cigarettes that have less
14 risk and, therefore, cause less harm to fewer
15 people, correct?
16 A. We are trying to do that today. I
17 believe the company has tried to do that
18 historically, but we have a very aggressive program
19 working in that regard.
20 Q. And you have announced those intentions
21 to the world on your web site, have you not?
22 A. I am not sure what you are referring to.
23 Q. You have made public your desire and
24 intention to use the science that's available to
25 cooperate with public health officials towards the

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1 Szymanczyk
2 end of making a cigarette that's less risky and
3 that will harm fewer people, correct?
4 A. I'm not sure we put on our web site the
5 work that we are doing to try to reduce the risk.
6 Q. But you have made it known that you are
7 endeavoring to do that, have you not?
8 A. We have, yes.
9 Q. Then on the second column, sir, right in
10 the middle of the second column, the sentence that
11 starts, "We think." You see that?
12 "We think that these documents and the
13 analyses merit the careful attention of our
14 readership because they provide massive detailed
15 and damning evidence of the tactics of the tobacco
16 industry. They show us how this industry has
17 managed to spread confusion by suppressing,
18 manipulating and distorting the scientific record.
19 They also make clear how the tobacco industry has
20 been able to avoid paying a penny" -- now, this is
21 before the Master Settlement Agreement. Okay --
22 "in damages, and how it has managed to remain
23 usually profitable from the sale of a substance
24 long known by scientists and physicians to be
25 lethal."

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1 Szymanczyk

2 The first question, did I read that
3 correctly?

4 A. I believe you did.

5 Q. Second question, has anyone in the
6 company ever brought to your attention that this
7 rather strong allegation by the Board of Governors
8 of The American Medical Association had been made
9 about your company in 1995, your company among
10 others?

11 MR. BLEAKLEY: Objection.

12 A. The answer to your question is, relative
13 to this allegation by this specific body, no. But
14 this is not the first time I have heard this
15 allegation or some form of this allegation.

16 Q. If you would, sir, look at the last
17 page, page 258.

18 A. I don't have a 58, I have a 57.

19 Q. I will put that page with the exhibit
20 that has been marked.

21 A. Okay.

22 Q. At the bottom of the first column, it
23 states, "In summary, the evidence is unequivocal.
24 The United States public has been duped by the
25 tobacco industry. No right-thinking individual can

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1 Szymanczyk
2 ignore the evidence. We should all be outraged,
3 and we should force the removal of this scourge
4 from our nation, and by so doing, set an example
5 for the world. We recognize the serious
6 consequences of this ambition, but the health of
7 our nation is more important than the profits of
8 any single industry."

9 The first question is, did I read that
10 correctly?

11 MR. BLEAKLEY: Objection.

12 A. I believe you did.

13 Q. Second question, has anyone in the
14 company at or about the time this statement was
15 made or subsequent to the statement being made
16 related to you the gist of this statement made by
17 the members of the Board of Governors of The
18 American Medical Association?

19 MR. BLEAKLEY: Objection.

20 A. Well, once again, I haven't heard this
21 statement relative to this specific body. But this
22 is -- it appears to be a statement of prohibition,
23 and certainly, I have heard those -- there are
24 various people that believe that smoking should be
25 prohibited, and so, I have heard that before.

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1 Szymanczyk
2 Q. The Master Settlement Agreement was in
3 part a recognition not of prohibition but a joint
4 collaborative effort between the public health
5 community and the cigarette industry to try to
6 share information towards the end of ending, if you
7 will, the war between the public health community
8 and the tobacco industry, so that there would be a
9 spirit of cooperation towards the end of reducing
10 the risk of cigarettes, correct?

11 MR. BLEAKLEY: Objection.

12 MR. KLEIN: Objection.

13 A. My description of the Master Settlement
14 Agreement would be a bit different than that.
15 Q. It calls for prohibition, doesn't it?
16 A. No. The Master Settlement Agreement,
17 and I think there is a reason for that, at least in
18 this country, while under one hand I think the
19 public health community has an obligation and a
20 duty to try to reduce harm, and I believe we share
21 in that duty in trying to reduce harm, we also live
22 in a democracy. And so, we protect people's free
23 rights to make choices in their adult lives to live
24 the way they want to. And so, we have to balance
25 the tension between democracy and harm reduction.

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1 Szymanczyk
2 We have to achieve both in this country.
3 Q. And the Master Settlement Agreement was
4 an effort to do that?
5 A. It was an effort in some areas to do
6 that. It doesn't mean there aren't other areas
7 that need to be pursued.
8 The Master Settlement Agreement, in
9 fact, couldn't place a set of regulations on the
10 industry related to dealing with specifically
11 reducing the amount of consumption of cigarettes by
12 kids; but also in making sure that information is
13 made publicly available, and that there is a
14 regulatory supervisory group called the Attorneys
15 General that can review what goes on in a tobacco
16 company and meet with us and come and talk to our
17 employees and review documents in the company to
18 make sure that they are comfortable that we are
19 operating in the way they think is appropriate, and
20 in that way, I think to rebuild trust and
21 credibility.
22 Q. And you believe that to be a good thing,
23 do you not?
24 A. I think the most productive thing for
25 the American society is, in fact, to try to work

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1 Szymanczyk
2 together with all the resources that we can in a
3 constructive way to try to deal with harm reduction
4 and deal with democracy and deal with both of them
5 in a positive way.
6 Q. And you believe that your company is
7 full square behind the proposition of trying to
8 reduce the harm but with due consideration to the
9 rights of people to make informed choices to
10 undertake risky behavior?
11 A. I believe that that is what we are
12 working very hard to do. I wouldn't say to you we
13 are perfect, but I would say that I think we are
14 working very hard to do that.
15 Q. That Master Settlement Agreement we are
16 talking about was dated November 1998, correct?
17 A. That was the Master Settlement
18 Agreement. There were four agreements that
19 preceded that, as you well know.
20 MR. MOTLEY: I believe we are about at
21 12:30, I am at a convenient breaking point.
22 If it's okay with you, we will take a break.
23 THE VIDEOGRAPHER: The time is 12:24

24 p.m. We are going off the record.
25 (Discussion off the record.)

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1 Szymanczyk
2 (One-hour luncheon break taken.)
3 THE VIDEOGRAPHER: The time is 1:46
4 p.m. We are back on the record.
5 A F T E R N O O N S E S S I O N
6 (Time noted: 1:48 p.m.)
7 M I K E S Z Y M A N C Z Y K, resumed and
8 testified as follows:
9 EXAMINATION BY (Cont'd.)
10 MR. MOTLEY:
11 Q. Good afternoon, sir.
12 A. Good afternoon.
13 Q. We are resuming your deposition at this
14 time. It's about a quarter to 2:00.
15 Were you at the meeting of the employees
16 of Philip Morris in April 1996 when Jeff Bible made
17 a talk to the employees in a huge tent set up for
18 the annual stockholders meeting at Philip Morris
19 U.S.A.'s manufacturing center in South Richmond?
20 Do you recall that?
21 A. Yes.
22 Q. They gathered thousands of employees and
23 officials, and I believe it was following that
24 there was a shareholders meeting the next day or
25 later that day?

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1 Szymanczyk
2 A. I don't recall being there, no.
3 Q. Let me ask you if this refreshes your
4 recollection, do you remember Jeff Bible, the CEO
5 of Philip Morris Companies, making this statement,
6 he likened Philip Morris to the western Allies who
7 fought Germany, and he told the employees, quote:
8 It took Winston Churchill and Roosevelt more than
9 five years to prevail to get these bad guys and
10 others who tried to prevail against the Allies. It
11 took a lot of smart thinking." And then he went on
12 to say to the Philip Morris employees that, "They,"
13 Philip Morris employees, "would eventually win the
14 tobacco war"? Do you recall any such presentation
15 as that?
16 A. No, I don't believe I was there.
17 MR. MOTLEY: Let me hand you this and
18 mark it as Exhibit 11.
19 (Plaintiff's Exhibit 11, Richmond
20 Times news article, marked for
21 identification, as of this date.)
22 MR. MOTLEY: Plaintiff's 11 is a news
23 article that appeared in the Richmond Times
24 dispatched under the biline of Chip Jones on
25 April 25, 1996.

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1 Szymanczyk
2 Q. I am handing you this just to see if by
3 looking at this it refreshes your memory.
4 A. I don't believe I was in attendance at
5 this meeting. I don't recall this.
6 Q. Have you ever heard Mr. Bible compare
7 the battle with public health officials and lawyers
8 in terms of the western Allies against Germany?

9 MR. BLEAKLEY: Objection.
10 A. I have not, no.
11 Q. In October 1999, were you aware of an
12 article in The New York Times that cites Philip
13 Morris officials as stating that they were
14 unveiling a new Internet site as part of a \$100
15 million corporate image campaign?
16 A. I don't recall that. Would you like me
17 to look at it?
18 Q. Yes, sir, please.
19 MR. KLEIN: The date of that again?
20 MR. MOTLEY: October 13, 1999.
21 MR. KLEIN: Is that 12?
22 MR. MOTLEY: Yes, it is 12.
23 A. What's your question?
24 Q. Do you recall this article first?
25 A. No, I don't.

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1 Szymanczyk
2 Q. Is it true that in October 1999 Philip
3 Morris announced a \$100 million corporate image
4 campaign that would include advertisement of the
5 compliance with the Master Settlement Agreement and
6 public charitable contributions that Philip Morris
7 was making to such things like Meals On Wheels and
8 things like that?
9 A. This article says that the author, Barry
10 Meyer, says that we -- he didn't say we announce.
11 He says put on a new Internet site it unveiled on
12 Tuesday as part of a hundred million dollar
13 campaign. It didn't say we told him that. That's
14 what he said.
15 Our Internet site was a part of an image
16 campaign. Our Internet site was what I said it was
17 before. Our Internet site --
18 Q. Maybe this will clarify it.
19 MR. MOTLEY: Mark that, please.
20 (Plaintiff's Exhibit 12, New York
21 Times news article, marked for
22 identification, as of this date.)
23 Q. I have now handed you, I haven't marked
24 it yet, a newspaper article from the year 2000
25 announcing a media campaign by Philip Morris.

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1 Szymanczyk
2 Do you recall that?
3 A. We are finished with this? I want to
4 complete my answer on this.
5 I believe what I said was, I have
6 already explained to you that the web site was, as
7 many companies had, taking advantage of the
8 Internet as a means to provide consumers with
9 information that we thought would be of interest to
10 them. This is a reporter's statement about what he
11 thinks it might have been or might not have been.
12 Okay.
13 What is your question on this?
14 Q. The next one is an article in the year
15 2000 that I just handed you --
16 A. Correct.
17 Q. -- that makes reference to Philip Morris
18 announces.
19 Do you see that? It says, "Philip

20 Morris announces."
21 A. I don't know what this is.
22 Q. Do you recognize that as an announcement
23 from Philip Morris?
24 A. I don't know what it is.
25 Q. Can I have it back.

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1 Szymanczyk
2 A. Here.
3 Q. This is from Philip Morris U.S.A., at
4 the top, it looks like a press release, it says,
5 "New York, July 17, the year 2000. Philip Morris
6 U.S.A., the nation's largest tobacco company, today
7 announced, July 17th of this year, that it will
8 launch a series of national television ads designed
9 to communicate to the public how the advertising
10 and marketing of tobacco products has fundamentally
11 changed since the tobacco industry entered into the
12 1998 Tobacco Settlement Agreement with the states."
13 A. Let me say I don't recognize this as a
14 Philip Morris press release, and it doesn't look
15 like one, any one that I have ever seen. I don't
16 know that it is. It may not matter, but I just
17 want to point that out.
18 Q. Did Philip Morris, in fact, in July
19 announce that they were going to embark on a
20 national media campaign with respect to the Master
21 Settlement Agreement?
22 A. Well, we launched a campaign. I can't
23 quite tell you whether or not we announced it. I
24 don't know whether somebody else announced it or we
25 did.

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1 Szymanczyk
2 MR. MOTLEY: What I just read from
3 will be 13.
4 (Plaintiff's Exhibit 13, Philip Morris
5 announcement, marked for identification, as
6 of this date.)
7 Q. Mr. Szymanczyk, in the opening statement
8 in Engle -- and I have given Peter copies of the
9 excerpts from the transcript -- on page 518, I'm
10 sorry, page 62, Mr. Webb told the jury that in that
11 phase of that trial, and I am quoting from him,
12 "You will hear the testimony that the companies are
13 on permanent probation forever, forever. There is
14 no limit on this Agreement, and these Attorneys
15 General have the power to investigate any
16 allegation that the Agreement is not being complied
17 with, and to ensure that the conduct that occurred
18 in the past cannot occur again in the future."
19 Do you agree or disagree with what your
20 lawyer, Mr. Webb, told the jury?
21 MR. BLEAKLEY: Objection.
22 Q. Specifically, those words in that
23 language.
24 MR. MOTLEY: I think he wants to look
25 at it.

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1 Szymanczyk
2 A. Can I have it. Where were we?
3 Q. Up at the top, first full sentence,
4 Mr. Webb says, "You will hear the testimony the

5 companies are on permanent probation forever,
6 forever. There is no limit on this Agreement, and
7 these Attorneys General have the power to
8 investigate any allegation that the Agreement is
9 not being complied with, and to ensure that the
10 conduct that occurred in the past cannot occur
11 again in the future."

12 MR. BLEAKLEY: Objection.

13 Q. My question is: Do you agree or
14 disagree with the statement as phrased by Mr. Webb?

15 MR. BLEAKLEY: Objection.

16 A. Not exactly, no. I would say that this
17 is a permanent vehicle, and it certainly is a
18 regulatory vehicle. So it is permanent in nature
19 in terms of the Attorneys General ability to
20 regulate the industry and regulate the company and
21 to investigate all matters as related to the
22 conduct of our business.

23 I think that the purpose is to ensure
24 that the alleged conduct from the past wouldn't
25 occur again. I don't have a basis to say, nor do I

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1 Szymanczyk
2 think the Attorneys General do to say, that some
3 conduct that was alleged actually occurred or not,
4 because these cases never went to trial.

5 Q. Sir, I take it then you do not agree
6 with your lawyer, and I am quoting word for word
7 from what he told the jury --

8 A. I wouldn't agree with -- I would modify
9 that statement.

10 Q. So you wouldn't agree with his statement
11 that, "You will hear the testimony that the
12 companies are on permanent probation, forever,
13 forever"?

14 A. Sure. I wouldn't have said it that way,
15 but I would agree with that part of the statement.
16 I don't agree with that last part.

17 Q. You don't agree with the part that says
18 to ensure that the conduct, not the alleged
19 conduct, but the conduct, that occurred in the past
20 cannot occur again in the future? You disagree
21 with that?

22 MR. BLEAKLEY: Objection.

23 A. I would disagree without the word
24 "alleged," because I don't know what he means by
25 that, what assumptions he is making.

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1 Szymanczyk
2 Q. Did you look at the documents that
3 Mr. Webb looked at? Have you looked at the
4 historical documents of the conduct of Philip
5 Morris?

6 A. No.

7 Q. Would you assume that Mr. Webb has?

8 MR. BLEAKLEY: Objection.

9 Q. Page 71, it should be in that same
10 stack, page 71 up at the top.

11 Mr. Webb further told the jury on page
12 71, "However, they wanted to make certain that
13 there was a huge penalty imposed against the
14 tobacco companies for what had happened in the
15 past."

16 Do you agree with that statement of
17 Mr. Webb as stated?
18 MR. BLEAKLEY: Objection.
19 A. Well, I don't know what they wanted to
20 make certain of. I think they wanted to make
21 certain that they got an amount of money paid to
22 them; and that they -- I believe they viewed it as
23 a penalty; and I think that they wanted to make
24 sure that the business was operated in a particular
25 way; and that any allegations or views that they

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1 Szymanczyk
2 had relative to misconduct in the past based on the
3 construction of the Agreement couldn't occur going
4 forward into the future.

5 I wouldn't take that to mean that
6 Mr. Webb is making an assumption that something
7 happened in the past.

8 Q. Page 83, sir. First full paragraph at
9 folio 5, "There are three major areas of
10 regulation, they fall into three different
11 categories; there is advertising and marketing
12 restrictions" -- and we have already talked about
13 that, right?

14 A. Yes.

15 Q. -- "provisions requiring public access
16 to tobacco industry documents, and there are
17 specific provisions that deal with the major issue
18 that you, obviously, dealt with in phase one, which
19 is suppression of scientific research, and it
20 cannot be done under this Agreement anymore, and
21 making any material misrepresentations about
22 smoking and health issues."

23 MR. MOTLEY: Let's go off the record.
24 (Discussion off the record.)

25 THE VIDEOGRAPHER: The time is 2:04

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1 Szymanczyk
2 p.m. We are going off the record.
3 (Discussion off the record.)
4 THE VIDEOGRAPHER: The time is 2:07

5 p.m. We are back on the record.

6 Q. Mr. Webb on page 83 states, "There are
7 three major areas of regulation. They fall into
8 three different categories; there is advertising
9 and marketing restrictions, provisions requiring
10 public access to tobacco industry documents, and
11 there are specific provisions that deal with the
12 major issue that you, obviously, dealt with in
13 phase one," we are talking about that jury, "which
14 is suppression of scientific research, and it
15 cannot be done under this Agreement anymore, and
16 making any material misrepresentations about
17 smoking and health issues."

18 Now, sir, do you know what documents or
19 what testimony Mr. Webb had referenced to when he
20 stated that suppression of scientific research is
21 prohibited under the Master Settlement Agreement?

22 MR. BLEAKLEY: Objection.

23 A. I'm not quite sure what you are asking
24 me.

25 Q. I am asking you do you know to what

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1 Szymanczyk
2 Mr. Webb was referring when he said suppression of
3 scientific research cannot be done under the Master
4 Settlement Agreement anymore?
5 MR. BLEAKLEY: Objection.
6 A. I don't know specifically what he was
7 referring to, but there is a part of the Master
8 Settlement Agreement that requires us to make
9 available all documents and so on. So that's part
10 of the Agreement.
11 Q. Does the Agreement also prohibit Philip
12 Morris and other manufacturers from making any
13 material misrepresentations about smoking and
14 health issues?
15 A. I believe it does. I believe that would
16 be part of it.
17 Q. On page 91, Mr. Webb tells the jury in
18 the middle, folio 11, he says that, "The jury saw a
19 lot of internal tobacco company documents in phase
20 one. This is an area of regulation, a requirement
21 in the Master Settlement Agreement, that says to
22 the tobacco companies that the public has the right
23 to have access to your internal company documents
24 that had been used in litigation, produced in
25 litigation."

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1 Szymanczyk
2 And I believe you already told me that
3 that, in fact, has been done, they are on the
4 Internet and in the libraries --
5 MR. BLEAKLEY: Objection.
6 A. To my knowledge, the documents that
7 are covered under this are, in fact, produced.
8 Q. And then he goes on to say, "The idea
9 behind this provision is that these documents that
10 were presented to juries, like you are one,
11 evidence improper conduct by the tobacco companies,
12 and so, everyone should know about it, so make it
13 public."
14 First question to you, sir, have you
15 taken the opportunity to look at the documents from
16 the '50s, '60s, '70s, '80s before you came to the
17 company to find out whether or not those documents
18 evidence improper conduct?
19 MR. BLEAKLEY: Objection.
20 A. I have not reviewed the historical
21 documents.
22 Q. And then, he goes on to say, "And it's
23 also done to make available for litigation in other
24 cases," and we have already discussed that, "and
25 it's also done so that scientists, people in the

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1 Szymanczyk
2 public health community," then on to page 92, "will
3 have access to all the tobacco company documents in
4 connection to smoking and health issues that they
5 want to deal with."
6 You mentioned earlier that Philip Morris
7 was taking advantage of public health information
8 developed by people outside the company and trying
9 to develop less risky cigarettes.
10 My question to you, sir, is simply: I
11 take it that this is a two-way street, that under

12 the Master Settlement Agreement, internal research
13 done by Philip Morris that might lead to the
14 identification of harmful substances are now being
15 shared with the public health community?

16 MR. BLEAKLEY: Objection.

17 A. The information that we develop
18 relative to trying to do science around lower-risk
19 cigarettes as it's developed and completed in the
20 scientific protocol is published and made
21 available. Yes, we are in that process. There is
22 a process for doing that.

23 Q. Yes, sir, I understand. Pages 99 and
24 100.

25 A. Okay.

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1 Szymanczyk

2 Q. You see your name on this page, it says,
3 "When Mr. Szymanczyk testifies," and I want you to
4 drop down, if you don't mind, to folio number 24,
5 "he," meaning you, "will tell you that the Master
6 Settlement Agreement has been the single most
7 significant event in the history of Philip Morris.
8 That's how profound this Agreement has had on this
9 company and its conduct and in changing its
10 conduct; and particularly, addressing things that
11 you," meaning the jury, "and others have found to
12 be wrong, fraudulent things that companies selling
13 a dangerous product should not be doing."

14 My question to you in regard to
15 Mr. Webb's statement to the jury is: Have you been
16 presented with the evidence that was introduced
17 that Mr. Webb is referring to when he says
18 "fraudulent things that companies selling of
19 dangerous products should not be doing"?

20 MR. BLEAKLEY: Objection.

21 A. I have not been introduced to evidence.
22 I'm not sure that he was referring to evidence
23 relative to Philip Morris.

24 Q. Who was he --

25 A. I don't know.

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1 Szymanczyk

2 Q. He was representing Philip Morris,
3 wasn't he?

4 A. Yes, but I don't know that's what he was
5 referring to.

6 Q. It says you are going to be talking
7 about it to the jury.

8 Did you talk to the jury about prior
9 fraudulent conduct of Philip Morris?

10 MR. BLEAKLEY: Objection. The
11 testimony is in the transcript, it speaks
12 for itself.

13 Q. You recall you testified --

14 MR. BLEAKLEY: Objection.

15 A. Do I recall testifying what?

16 Q. Do you recall testifying about
17 fraudulent things that companies in the past before
18 your watch as CEO, fraudulent things that companies
19 selling of dangerous products should not be doing?
20 Do you recall giving any such testimony?

21 MR. BLEAKLEY: Objection.

22 A. No, I don't. I testified relevant so

23 the things we are doing now that we think are
24 appropriate based on what the Attorneys General and
25 society in general through them seems to be saying

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1 Szymanczyk
2 they expect from a tobacco company.

3 Q. And then Mr. Webb goes on to say, "It
4 goes beyond, though, the literal words in that
5 Agreement. He is going to tell you how interacting
6 with the Attorneys General in these regular
7 meetings actually means that Philip Morris has a
8 chance to show it can be responsible."

9 My question to you, sir, is: Have you
10 been at meetings with the Oversight Committee of
11 The National Association of Attorneys General who
12 are empowered by the Master Settlement Agreement to
13 monitor things that are going on?

14 MR. BLEAKLEY: Objection.

15 A. There is a team assigned to Philip
16 Morris, and I have met with them, yes.

17 Q. Do you agree with Mr. Webb that these
18 frank and open discussions with the team that's
19 assigned to Philip Morris has given Philip Morris
20 an opportunity to show that it is living by its
21 code of corporate conduct or its core mission
22 statements that you yourself did the first draft
23 of?

24 A. Well, part of the team's responsibility
25 is to ensure compliance with the MSA. So when we

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1 Szymanczyk
2 met with them, part of what goes on is them wanting
3 to explore specific areas, because they want to
4 make sure that compliance is being delivered.

5 There are other meetings that they also
6 have that other representatives of Philip Morris
7 attend on a regular basis that go further. But I
8 have attended two meetings with AGs, and will
9 continue to have meetings.

10 Q. Volume 519, page 29. Mr. Webb on page
11 29 of this volume 519 tells the jury that you --

12 A. Where are you?

13 Q. I'm sorry, folio 15. "Mr. Szymanczyk
14 will tell you that he believes that Philip Morris
15 should communicate to the public about the health
16 risks of smoking and put it right on its web site,
17 not hide it, not conceal it, put it on the web
18 site."

19 And, in fact, you have told us that you
20 have utilized the web site to get as much
21 information as possible to the consumers and the
22 public health community; isn't that correct?

23 MR. BLEAKLEY: Objection.

24 A. We have used the web site to provide the
25 public health authority information to make it

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1 Szymanczyk
2 broadly available, yes.

3 Q. Page 37 of that same volume, sir, line
4 7. "Mr. Szymanczyk will testify during his
5 testimony to show you how Philip Morris has changed
6 its conduct since your phase one verdict to address
7 issues of wrongdoing, to show you that that

8 conduct, in fact, has been changed."
9 Do you know which conduct that was
10 presented to the jury in phase one Mr. Webb was
11 referring to in connection with your testimony?
12 MR. BLEAKLEY: Objection.
13 A. I don't know specifically what he was
14 referring to.
15 Q. Going further on line 12,
16 "Mr. Szymanczyk will also tell you that in
17 connection with your phase one verdict in the
18 closing argument, there are certain Philip Morris
19 documents that were used to emphasize Philip
20 Morris's wrongful conduct."
21 Have you, sir, studied the closing
22 arguments and documents that were used in phase one
23 of Engle to which Mr. Webb refers?
24 MR. BLEAKLEY: Objection.
25 A. No.

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1 Szymanczyk
2 Q. "And Mr. Szymanczyk will tell you these
3 people listed on this chart here" -- you remember I
4 earlier read you some names, like Helmet Wakeham
5 and Robert Seligman -- "that those people authored
6 documents in closing arguments to emphasize Philip
7 Morris's wrongful conduct during the phase one
8 trial. Mr. Szymanczyk will tell you that he
9 doesn't know any of these people. None of these
10 people work at Philip Morris. He has never met any
11 of those people, he has never talked to them, and
12 those people have nothing to do with Philip
13 Morris."
14 The names of those people, one was
15 Thomas Osdene, have you ever meet Thomas Osdene?
16 MR. BLEAKLEY: Objection.
17 A. Just a minute. I'm trying to figure out
18 what this says. It says, "What Mr. Szymanczyk will
19 also tell you is in connection with your phase one
20 verdict in the closing argument, there are certain
21 Philip Morris documents that were used to emphasize
22 Philip Morris's wrongful conduct."
23 That's Mr. Webb saying that to the jury?
24 Q. Right, correct.
25 A. Not that I am going to tell them about

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1 Szymanczyk
2 that. "And Mr. Szymanczyk will tell you these
3 people listed on the chart here, those people
4 authored documents in closing arguments to emphasis
5 Philip Morris's wrongful conduct during the phase
6 one trial, Mr. Szymanczyk will tell you that he
7 doesn't know any of these people."
8 Q. I understand that.
9 A. I just want to make it clear he wasn't
10 emphasizing talking about those documents.
11 Q. I understand that, sir. And I now have
12 this list.
13 MR. MOTLEY: Would you mark this as
14 the next number, please.
15 (Plaintiff's Exhibit 14, list of
16 names, marked for identification, as of this
17 date.)
18 MR. MOTLEY: This is Exhibit number 14,

19 which purports to be a list used by Mr. Webb
20 of former Philip Morris employees.
21 Q. You remember earlier I read you some
22 of those names?
23 A. Yes.
24 Q. In fact, those are not Philip Morris
25 former employees that you had any interaction with

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1 Szymanczyk
2 when you were with the company, isn't that fair to
3 say?

4 A. They are not.

5 Q. Are you aware that Mr. Osdene has
6 asserted his privilege to the Fifth Amendment
7 against self-incrimination when asked questions
8 about his wrongful and fraudulent conduct while
9 employed by Philip Morris?

10 MR. BLEAKLEY: Objection.

11 MR. SCHROEDER: Objection.

12 A. I am aware of that.

13 Q. To complete what Mr. Webb says, he says
14 on page 38, you are going to tell the jury that you
15 believe Philip Morris is changing, is moving in the
16 right direction, and he will tell you that he is
17 going to do everything he can to make certain that
18 that ship continues to sail in the right direction
19 under his leadership in the future.

20 And, in fact, you did go down there and
21 testify to that jury that you were going to do
22 everything you can to make certain that the ship
23 continues to sail in the right direction in
24 adherence to your core value statement that you
25 made, correct?

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1 Szymanczyk

2 MR. BLEAKLEY: Objection.

3 Q. Isn't that correct?

4 A. Not in so many words. Yes, not exactly
5 the way you say it.

6 Q. Brown & Williamson was a defendant at
7 the Engle trial, are you aware of that?

8 A. Yes.

9 Q. Are you aware, sir, that Mr. Upshaw, a
10 lawyer for Brown & Williamson, told the jury as
11 follows: "I know you heard a lot of bad things;
12 however, those things didn't show you about the
13 people at Brown & Williamson today, and how the
14 people at Brown & Williamson today are trying to
15 correct the wrongdoing of the past."

16 Have you had any interface with Knit
17 Brooks, the CEO of Brown & Williamson? He is a
18 British gentleman.

19 MR. BLEAKLEY: Objection.

20 MR. SCHROEDER: Objection.

21 A. Relative to what? I know who he is.

22 Q. Relative to anything.

23 Have you had any discussion with him
24 with respect to the Engle trial, for example?

25 A. No, I have not.

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1 Szymanczyk

2 Q. I take it you don't know about what
3 Mr. Upshaw was saying when he said, "The people at

4 Brown & Williamson today are trying to correct the
5 wrongdoing of the past"?
6 MR. BLEAKLEY: Objection.
7 MR. CONLON: Objection.
8 Q. You don't know what he was talking
9 about?
10 A. I do not.
11 Q. On volume 20, 582, Mr. Smith, Mr. Gordon
12 Smith, have you ever met Mr. Gordon Smith? He is
13 from Atlanta, Georgia, who represented Brown &
14 Williamson.
15 A. I think I met him, yes.
16 Q. He is referring to Mr. Knit Brooks at
17 page 82. He says, "Mr. Brooks will tell you in the
18 past tobacco executives haven't been willing to go
19 and deal face to face and honestly with critics in
20 the past."
21 Do you have any knowledge as to what
22 Mr. Smith may have been referring to when he said
23 "tobacco executives haven't been willing to go and
24 deal face to face and honestly with critics in the
25 past"?

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1 Szymanczyk
2 MR. BLEAKLEY: Objection.
3 MR. CONLON: Objection.
4 A. I don't know what he was specifically
5 referring to.
6 Q. But you certainly have, as you told us,
7 since 1998 met openly and honestly with the
8 Attorneys General and other public health officials
9 in an effort to communicate directly and openly
10 with such people, have you not?
11 A. We have, yes.
12 MR. MOTLEY: Mark this as the next
13 exhibit, please.
14 (Plaintiff's Exhibit 15, A frank
15 statement to cigarette smokers, marked for
16 identification, as of this date.)
17 Q. Mr. Szymanczyk, I have given you a
18 document that is Exhibit 15, and is entitled, "A
19 Frank Statement to Cigarette Smokers."
20 I ask you to assume that that
21 advertisement appeared in The New York Times. I
22 happen to have the copy you have that appeared in
23 the Florida newspapers. But we have listed in this
24 case a Xerox copy of one that appeared in The New
25 York Times in January 1954.

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1 Szymanczyk
2 Have you ever seen a copy of something
3 called the "Frank Statement to Cigarette Smokers"?
4 A. I have seen the "Frank Statement"
5 before, yes.
6 Q. Would you note that listed among the
7 sponsors on the top right-hand corner is Philip
8 Morris & Company, Limited; Parker McCombs,
9 president?
10 A. I note that, yes.
11 Q. I assume you didn't know Mr. McCombs in
12 1954, but did you come to learn at one point that
13 he was president of Philip Morris?
14 A. No. Frankly, I haven't heard his name

15 before. That was a long time ago. I was five at
16 the time.
17 Q. If you look at the first column under
18 item number 4, you will see a statement that says
19 "We accept."
20 Do you see that?
21 A. Yes, I see a paragraph begins "We
22 accept."
23 Q. "We accept an interest in people's
24 health as a basic responsibility paramount to every
25 other consideration in our business."

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1 Szymanczyk
2 Would you believe that that's part of
3 your corporate code of conduct today for Philip
4 Morris in 1998, that Philip Morris accepts an
5 interest in people's health as a basic
6 responsibility paramount to every other
7 consideration in your business?
8 A. I would say that what's paramount to our
9 business is the accomplishment of the mission I
10 described for the company.
11 One important element of that mission is
12 to give people the products that they prefer, and
13 to certainly do that by lowering the risks of the
14 product, because that's what people want from us.
15 But I think there are other important
16 considerations, like underaged smoking, for
17 example, like working with public health
18 authorities so that we have a collaborative effort
19 going on, as well as important things that we have
20 to do relative to our employees, making sure that
21 they are trained and developed and so on.
22 So it's really the accomplishment of
23 that mission that's paramount to me, and we have to
24 accomplish all of it; and certainly, dealing with
25 lower-risk products and getting those to the

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1 Szymanczyk
2 marketplace is an important aspect of what we have
3 to do.
4 I don't believe that we can accept the
5 responsibility for people's health. I think that's
6 an individual thing. But certainly, to the degree
7 we can find ways to lower the risks of our product
8 and people want to smoke our product, we have to do
9 that, and that's our responsibility.
10 Q. The second statement right under that
11 is, "We believe the products we make are not
12 injurious to health."
13 Based on your testimony here before
14 today, you wouldn't make that statement today,
15 would you?
16 A. I would not be able to make that
17 statement today.
18 Q. The next statement is, "We always have
19 and always will cooperate closely with those whose
20 task it is to safeguard the public's health."
21 With respect to the part of it that
22 says, "We always will cooperate with those whose
23 task it is to safeguard the public's health," I
24 believe you said since your watch started, you can
25 vouch for your company that since 1998 you have

1 Szymanczyk
2 closely cooperated with those whose task it is to
3 guard public health? You can vouch for that, can't
4 you?

5 A. What I can say to you is we are working
6 very hard to have dialogue collaborate with and
7 cooperate in areas where we certainly can find some
8 common ground to cooperate on.

9 That isn't every issue. I mean, there
10 are some public health authorities, as you pointed
11 out, that believe cigarettes ought to be
12 prohibited, and we would disagree with that.

13 Q. Do you know how many newspapers this
14 statement was placed with?

15 A. I do not. I don't know how many
16 newspapers. My understanding is that this ran in
17 one newspaper, an assertion in a number of
18 newspapers.

19 Q. From time to time, are you aware that
20 Philip Morris has taken out advertisements such as
21 this not promoting the sale of a product but making
22 statements to the public about various issues?

23 A. I don't know what specifically you are
24 referring to.

25 Q. For example, on environmental tobacco

1 Szymanczyk
2 smoke, are you aware that Philip Morris made a
3 position paper statement in the print media about
4 Philip Morris's position on environmental smoke?

5 A. I don't recall that specifically. Maybe
6 it's the case, but I would have to see it.

7 Q. You mentioned earlier the Internet. You
8 recognize that there are ways of communicating with
9 your customers and the public other than by
10 advertisements on billboards and alike, correct?

11 A. Yes. We do have information on the
12 Internet.

13 Q. You also have a database that has
14 millions of names of smokers who have written in
15 and made inquiries or who have participated in
16 discount programs and alike, are you aware of that?

17 A. We have a database of adult smokers,
18 yes.

19 Q. And from time to time, you communicate
20 with them directly?

21 A. We send them direct mail pieces.

22 Q. There is some confusion as to whether
23 that database contains 26 million names or 2.6
24 million names.

25 Do you have any information that could

1 Szymanczyk
2 help me with that?

3 A. It contains more than 2.6 million names.

4 Q. I believe you testified to 26 million
5 names.

6 A. I don't know the exact number. I think
7 that number was provided in Engle, and it's
8 approximately in that range.

9 Q. Approximately correct?

10 A. Yes.

11 Q. I believe I asked you earlier if you met
12 or knew Alexander Holtzman, and correct me if I'm
13 wrong, I believe you said you did not know him?
14 A. Not that I recall, no.
15 Q. With respect to the "Frank Statement,"
16 "They pledge in the Frank Statement," Exhibit 15,
17 "to aid and to pledge aid and assistance to the
18 research effort into all phases of tobacco use and
19 health."
20 If you want to look at it, but I think I
21 read that correctly. It's number 1 on the second
22 column.
23 A. Okay.
24 Q. Mr. Holtzman, the former general counsel
25 of Philip Morris, testified in this case, the

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1 Szymanczyk
2 Falise case, on March the 3rd, the year 2000, and
3 he testified at page 124 with reference to that
4 page, "All phases of tobacco use and health," that
5 that phrase would include joint exposure of tobacco
6 and other environmental agents.
7 Would you agree with Mr. Holtzman that
8 the pledge made in 1954 would include
9 investigations of allegations that tobacco in
10 conjunction with other substances, and in this case
11 specifically asbestos, would fall within the pledge
12 to investigate all phases of tobacco use and
13 health?
14 MR. BLEAKLEY: Objection.
15 A. I don't know.
16 MR. SEXTON: Objection.
17 Q. Do you know anything, sir, about Philip
18 Morris's efforts in regard to the opposition of
19 smoking bands in the late '70s and '80s at certain
20 industrial work sites?
21 A. No, I do not.
22 MR. BLEAKLEY: Objection to form.
23 Q. When Philip Morris makes a statement on
24 your web site, for example, intended for people to
25 have access to, do you believe it would be

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1 Szymanczyk
2 reasonable for the people who access the
3 information to rely on the information that you
4 give them on your web site?
5 MR. BLEAKLEY: Objection.
6 A. I think they have to decide whether or
7 not they want to rely on that information. I mean,
8 that information that they access on the web site
9 comes from a broad range of different people of
10 perspectives. They are the public health
11 authorities from this country and other countries
12 around the world. But I think they have to make
13 the decision about what they rely upon.
14 I think most people do rely upon the
15 public health authorities for information relative
16 to products in certain product categories, and I
17 think that's certainly the case relative to
18 tobacco. But I think ultimately, the individual
19 makes that decision.
20 Q. When Philip Morris places an advocacy ad
21 as opposed to a promotional ad to promote a

22 cigarette, when you place such an advocacy ad, you
23 want the smokers, your customers, to believe and
24 rely on what you tell them, don't you?

25 MR. BLEAKLEY: You are talking about

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1 Szymanczyk
2 today?

3 MR. MOTLEY: Today.

4 MR. SCHROEDER: Objection.

5 A. What are you talking about? Can you
6 give me a specific example of an ad.

7 Q. The ad I showed you earlier where you
8 announced, I believe it's Exhibit 1 or 2, what you
9 were doing to prevent youth -- you and the health
10 public officials to prevent kids from taking up
11 smoking.

12 The statements you put in there you
13 wanted the public to believe in and rely on, didn't
14 you?

15 A. We wanted to give the public the
16 information we know to be true. I think the public
17 ultimately has to make their own decision based on
18 that information and other information that is also
19 available to them; because there is a lot of other
20 information that's available to them; and so, they
21 look at all of that, and they make their own
22 decision.

23 Q. Are you aware that in 1954 the president
24 of Philip Morris announced to the American public
25 that if any one of us believed that the product

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1 Szymanczyk
2 that we were making or selling was in any way
3 harmful to our customer's health, we would
4 voluntarily go out of business? Were you aware of
5 that?

6 A. I don't know what you are referring to.
7 When was that?

8 Q. 1954.

9 A. No, I don't know.

10 Q. You wouldn't be able to make that
11 statement today, would you, that is, if you thought
12 that Marlboro or any other product you make was in
13 any way harmful to a customer's health, you would
14 voluntarily go out of business? You have already
15 told us you could not make that statement today.
16 Can you answer yes or no.

17 A. I couldn't make that statement, and I
18 don't believe that that would be the right thing
19 for us to do, because we exiting the business
20 wouldn't change the fact that cigarettes are sold.
21 People will continue to buy them.

22 So I think a better thing for us to do
23 is lead in really running a responsible cigarette
24 business.

25 Q. So the answer to my question is, you

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1 Szymanczyk
2 wouldn't make that statement today for the reasons
3 you just gave?

4 A. No, I wouldn't, I wouldn't make that
5 statement today.

6 Q. In 1972, there was a gentleman named

7 James Bowling who was vice president of Philip
8 Morris. I ask you to assume he made the statement
9 that, "If our product is harmful, we will stop
10 making it," this is 1972, "we now know enough that
11 we can take anything out of our product, but we
12 don't know which ingredients to take out."

13 Sir, today, is Philip Morris capable of
14 taking out any particular ingredient of their
15 product that they believe to be harmful?

16 A. Well, we are certainly capable of taking
17 out any ingredient in the product because you can
18 take any ingredient out. You put it in, so you can
19 take it out.

20 I guess you can argue that if you took
21 the tobacco out, you wouldn't have the product.
22 But certainly, you have the capability to take any
23 ingredient out.

24 I don't think that's the issue. I think
25 in those days, it might have been a reasonable

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1 Szymanczyk
2 thing to say. Today, the issue is what are the
3 constituencies in smoke when you light a cigarette
4 that come from the burning of tobacco, and can you
5 take those out, and that's a much more difficult
6 challenge.

7 So I think science has progressed pretty
8 substantially since that statement was made. So
9 the meaning would be a lot different today.

10 Q. In 1998, Jeffrey Bible testified before
11 a jury in Minnesota and testified, "I don't know if
12 anyone dies from smoking tobacco. I just don't
13 know."

14 Today in the year 2000, could you make
15 that same statement?

16 MR. SCHROEDER: Objection.

17 A. Well, look, we are dealing with
18 statistical evidence, and the statistical evidence
19 shows a very strong correlation between smoking and
20 certain diseases.

21 While I don't know -- because as I
22 described earlier, I don't know the actual chain of
23 events that occur to cause a tumor to grow in a
24 human body related to cigarette smoke, I can't
25 pinpoint that smoke in this human being actually

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1 Szymanczyk
2 caused their disease or caused their death.
3 I think that you have to assume that the
4 statistics would lead you to believe that some
5 people have gotten ill and died from the fact that
6 they smoked cigarettes. I don't know whether it
7 was just because of the cigarette or some other
8 factors related to their particular life-style or
9 situation. But the statistics make it hard for me
10 to argue that somebody hasn't died with smoking
11 having played a role.

12 Q. So you would not make a statement for
13 the reason you just stated?

14 MR. SCHROEDER: Objection.

15 A. I don't know. Mr. Bible may be making
16 that statement in the context of the same way that
17 I have just made it, which is that he is unable to

18 pinpoint what it is about tobacco smoke that might
19 have caused somebody's death. I don't know that
20 because I never discussed that with him.

21 Q. Mr. Bible testified when I examined him
22 in the State of Florida case that it was likely
23 that cigarette smoke had caused thousands of people
24 to die.

25 Would you agree with that?

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1 Szymanczyk

2 MR. SCHROEDER: Objection.

3 MR. BLEAKLEY: Objection.

4 A. Again, I don't know the number, but I
5 believe that's what I just said. The statistics
6 would indicate that, certainly, cigarettes have
7 played a role in people getting diseases and, in
8 fact, dying.

9 Q. Do you know whether Philip Morris ever
10 publicly retracted the statement in the "Frank
11 Statement," that cigarettes are not injurious to
12 health?

13 A. I do not know that, but I can say that
14 on our web site we say explicitly there is no safe
15 cigarette.

16 Q. At least by then you have done it?

17 A. We say that. I can't tell you along the
18 way whether something else was said.

19 I do believe, at least in the entire
20 time that I have been with the company, the
21 company's position has been that cigarette smoking
22 is a risk factor for a number of different
23 diseases. The web site wasn't the first time.

24 Q. The web site was the first time that you
25 publicly stated that the evidence is overwhelming

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1 Szymanczyk

2 that smoking causes lung cancer, is it not?

3 A. That's the first time we used that
4 specific language.

5 Q. Are you familiar with Mr. James Morgan's
6 statement that nicotine and cigarette smoke is no
7 more addictive than gummy bears are to people who
8 love gummy bears?

9 MR. BLEAKLEY: Objection.

10 A. I have heard the statement, yes.

11 Q. That's not the position of Philip Morris
12 today, is it, sir?

13 MR. BLEAKLEY: Objection.

14 A. The position of Philip Morris is that
15 smoking is addictive, as the term is commonly used
16 today.

17 Q. Gummy bears wouldn't fit the commonly
18 used definition by the American Psychiatric
19 Association of a dependence-producing substance,
20 would it?

21 A. I don't think it would.

22 Q. Do you know when Mr. Morgan made that
23 gummy bear analogy?

24 A. I don't know exactly when he made it. I
25 believe he made it in testimony.

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1 Szymanczyk

2 Q. It was in 1997, and did you know

3 Mr. Morgan then?
4 A. I knew Mr. Morgan, yes.
5 MR. MOTLEY: This will be the next
6 number.
7 (Plaintiff's Exhibit 16, letter,
8 marked for identification, as of this date.)
9 Q. This is Exhibit 16. I know you were not
10 with the company at this time, Mr. Szymanczyk, but
11 this happened to occur in my home state of South
12 Carolina.
13 Have you ever been to Hilton Head?
14 A. I have once, yes.
15 Q. And this is from Mr. Helmet Wakeham to
16 Mr. Goldsmith, an official of Philip Morris, dated
17 March the 7, 1968.
18 I believe you told me earlier that you
19 generally knew that the Falise case is a case
20 involving allegations that cigarette smoking mixed
21 with asbestos is a lethal combination of two bad
22 substances. I don't mean to put words in your
23 mouth --
24 MR. BLEAKLEY: Objection.
25 MR. MOTLEY: Let me rephrase it.

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1 Szymanczyk
2 Q. You recall you made a statement about
3 the general awareness you had of what the Falise
4 case was about?
5 A. I do.
6 Q. So in that context, I ask you to look at
7 page 4 of Exhibit 16. Mr. Wakeham was the vice
8 president for research and development of Philip
9 Morris. I ask you to assume that. And you told me
10 earlier you never met him.
11 A. I never met him.
12 Q. He says at the top, "There should be a
13 study which might be an attempt to define in some
14 manner those elements of the population, who, like
15 asbestos industry workers, are more likely to
16 encounter serious risks by smoking and who,
17 therefore, should be discouraged from indulging the
18 habit." This is in 1968.
19 A. Where are you?
20 Q. On page 4 at the top, the first
21 paragraph, it starts off, "The extent human
22 ailments are really due to smoking and what are due
23 to other causes."
24 A. Okay.
25 Q. Do you see it? "An outgrowth of this

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2 study might be an attempt to define in some manner
3 those element of the population, who, like asbestos
4 industry workers, are more likely to encounter
5 serious risk by smoking, and who, therefore, should
6 be discouraged from indulging the habit. Nothing
7 could give greater credibility of the good will of
8 the cigarette industry than this kind of a move."
9 In the Falise case, Philip Morris was
10 asked to admit certain facts, and in this year,
11 Philip Morris stated the following: "Request to
12 admit number 28. In the year 2000, your company
13 was asked to admit that you," not meaning you

14 personally but your company, "never warned the
15 public that exposure to asbestos and cigarette
16 smoking acts synergistically to cause lung cancer."
17 And your response was, "Philip Morris admits this
18 request."

19 Do you have any information that would
20 contradict the fact that Philip Morris never
21 alerted asbestos workers not to smoke because of
22 the multiplicative effect of asbestos in cigarette?

23 MR. SCHROEDER: Objection.

24 A. Can I see what we are talking about. I
25 am a little confused.

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1 Szymanczyk

2 Q. Sure.

3 A. Where was it that you were reading from?

4 Q. The synergy page.

5 A. This is a request that we admit?

6 Q. That you admit that you did not warn
7 asbestos workers not to smoke. That's the bottom
8 line. Your company admitted that they never did
9 that.

10 My question to you is: Do you have any
11 information to dispute the fact that your company
12 has admitted in this case that they did not warn
13 asbestos workers?

14 A. I really don't know anything about that.

15 Q. So far as you know, Mr. Wakeham's
16 suggestion of March 7, 1968 that we just read has
17 to this date not been followed through on?

18 MR. BLEAKLEY: Objection.

19 MR. SCHROEDER: Objection.

20 A. I don't know that either.

21 Q. If your company through its lawyers have
22 admitted that they never warned asbestos workers
23 not to smoke, then by definition, they didn't do
24 what Dr. Wakeham told them to do in 1968,
25 therefore, should be discouraged from indulging the

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1 Szymanczyk

2 habit, correct?

3 MR. BLEAKLEY: Objection.

4 A. I really don't know what the specifics
5 of this are. But my understanding is that actually
6 the public health community and OSHA made some
7 decisions about warning asbestos workers relative
8 to asbestos and tobacco use, and that that warning
9 activity occurred back during the period of time
10 where asbestos became an issue.

11 Relative to what you are specifically
12 talking about, I don't have any knowledge of a
13 specific warning from Philip Morris.

14 Q. Notwithstanding what OSHA may have done
15 or may not have done, Philip Morris, to your
16 knowledge, didn't do anything to fulfill what
17 Dr. Wakeham suggested in 1968?

18 MR. BLEAKLEY: Objection.

19 MR. SCHROEDER: Objection.

20 Q. Philip Morris itself.

21 A. I have no knowledge of any activities in
22 that regard. So I can't tell you that they did or
23 they didn't.

24 Q. Are you aware that in 1970, Dr. Wakeham

25 again suggested that Philip Morris would like to

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1 Szymanczyk
2 identify those smokers who may be at risk and might
3 be urged not to smoke, asbestos workers are a good
4 example?

5 MR. BLEAKLEY: Objection.

6 A. I am not aware of that, no.

7 Q. Are you aware, sir, that this is a
8 privileged document, I believe it's a Bliley
9 document, an alleged privileged document, and the
10 date is March 21, 1985, and it's from Vicky B.
11 Thompson to Mr. Charles Wall, who you said you
12 know, and it's in regard to Alexander Holtzman
13 interview outline?

14 MR. MOTLEY: I believe it to be a Bliley
15 document; and therefore, plaintiff
16 acknowledges your objections and reservation
17 of rights.

18 MR. SEXTON: Mr. Motley, just for the
19 record, we renew our objection.

20 MR. MOTLEY: Sure, absolutely.

21 Would you mark this, please.

22 (Plaintiff's Exhibit 17, memorandum,
23 marked for identification, as of this date.)

24 Q. You weren't with the company in 1985?

25 A. No, I was not.

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2 Q. Have you seen this document prior to
3 today?

4 A. No, I do not believe I have.

5 Q. Could you look at the first page, sir.
6 They are discussing things they need to talk to
7 Alexander Holtzman about in connection with a
8 deposition.

9 If you look at number 10 at the bottom
10 of the third paragraph, it says, "Explanation of
11 early Philip Morris advertising and promotion
12 activities of concern; example, claims are safer or
13 less irritation."

14 Again, my question is: You have never
15 reviewed the ads to see if, in fact, early Philip
16 Morris advertising made claims that their
17 cigarettes were safer or less irritating than other
18 cigarettes?

19 MR. BLEAKLEY: Objection.

20 A. I really haven't, no.

21 Q. On page 6, line D -- I mean item D, the
22 question is asked, "In the 1970s and 1980s, why
23 didn't Philip Morris warn asbestos workers, people
24 with some kind of A-1 AT deficiencies or family
25 histories of CHD that they might be at special risk

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1 Szymanczyk

2 from smoking?"

3 I am only interested for the purpose of
4 this case in the issue about why didn't Philip
5 Morris warn asbestos workers.

6 Are you aware that in 1985 that Philip
7 Morris attorneys were concerned about the fact that
8 Philip Morris had not warned asbestos workers --

9 MR. BLEAKLEY: Objection.

10 Q. -- that they might be at special risk?
11 MR. BLEAKLEY: Objection.
12 A. I don't know that they were concerned
13 about it.
14 Q. They were concerned enough about it to
15 put it as an item of concern?
16 A. There is a question here, but I don't
17 know that that indicates they were concerned.
18 There is a question.
19 Q. Have you ever heard of a doctor named
20 Peter N. Lee?
21 A. No, I don't believe so.
22 Q. Are you aware that Dr. Lee issued a
23 report to Philip Morris in the year 2000 with
24 respect to asbestos exposure in cigarette smoking?
25 A. When was this?

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1 Szymanczyk
2 Q. This year.
3 A. I'm not specifically recognizing that
4 name on a report, but I know that our scientists
5 have reviewed the relevant information on asbestos,
6 so that we make sure we are up to date on it, and
7 that may be what you are referring to.
8 MR. MOTLEY: Would you mark this for
9 me, please, sir.
10 (Plaintiff's Exhibit 18, report from
11 Dr. Lee, marked for identification, as of
12 this date.)
13 MR. MOTLEY: Exhibit 18 is a report
14 from Peter N. Lee, dated February the year
15 2000 entitled, "A review of evidence on the
16 joint relationship of asbestos exposure and
17 smoking to the risk of lung cancer."
18 On page 96, the author says, "Finally,
19 I thank Philip Morris for financial
20 support."
21 Q. I hand you now Exhibit 18, and you can
22 see what I just read to you on page 96, if you
23 would like, and see if that refreshes your memory
24 at all about if you have ever seen anything like
25 that.

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1 Szymanczyk
2 A. I have not seen the report. The report
3 was done, I believe, at our scientists' request.
4 Q. Do you have any personal reason to doubt
5 the conclusion of the author, that it's
6 unquestionable that asbestos exposure and cigarette
7 smoking have a multiplicative effect as to the
8 disease lung cancer?
9 MR. BLEAKLEY: Objection.
10 MR. SCHROEDER: Objection.
11 A. I don't have any basis to either concur
12 with it or dispute it. You need to talk to one of
13 our company scientists to be able to get a good
14 answer to that question.
15 Q. But you are not here to deny that
16 statement, correct?
17 A. I am not here to agree with it, I am not
18 here to deny that, because I don't have the
19 scientific knowledge to be able to do that.
20 MR. MOTLEY: This is 19.

21 (Plaintiff's Exhibit 19, a review of
22 two recent papers by Hammond, Selikoff and
23 Seidman, marked for identification, as of
24 this date.)

25 MR. MOTLEY: Plaintiff's Exhibit

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2 number 19 is entitled, "Asbestos and
3 cigarette smoking, a review of two recent
4 papers by Hammond, Selikoff and Seidman.

5 The author is P.N. Lee, Peter N. Lee,
6 and the year is 20 years ago, July the 12,
7 1980. The British do it backwards. It's
8 December the 7th, 1980.

9 Q. I am not suggesting you should have seen
10 it, but I take it you have not seen it?

11 A. No.

12 Q. Dr. Lee on page 9, the concluding
13 sentence, the concluding paragraph, says, "Be that
14 as it may, the enormous lung cancer rates in
15 asbestos workers who smoke are justification enough
16 for the facts to be brought forcefully to the
17 attention of asbestos workers, as the authors
18 suggest. The health warning on the packet," we are
19 talking about a cigarette pack, "in the U.K. may be
20 adequate safeguard to ensure the average smoker
21 know the problems he may face. Whether this is so
22 for the asbestos worker is very open to doubt. The
23 tobacco industry should consider whether it might
24 take further steps to ensure the lethal smoking
25 asbestos combination is avoided."

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2 Recognizing that you are not a
3 scientist, nevertheless, sir, you are unaware of
4 anything as was stated by your lawyers in the
5 summer of this year? You are unaware of anything
6 Philip Morris did to follow the recommendations of
7 Dr. Lee in 1980 to make sure the lethal smoking
8 asbestos combination is avoided?

9 MR. SCHROEDER: Objection.

10 MR. BLEAKLEY: Objection.

11 A. Well, I am not aware that we did or we
12 didn't. So I can't answer your question.

13 Q. Your lawyer said you didn't in the
14 request to admit.

15 MR. BLEAKLEY: Objection.

16 A. The lawyer said specifically -- the
17 question was that we specifically never warned the
18 public?

19 Q. Correct, that's what I am asking.

20 A. That doesn't mean that the company
21 didn't work with the public health authorities or
22 other people to see that asbestos workers --

23 Q. That's speculative on your part, isn't
24 it? You don't have any information on that?

25 A. I told you that I don't have any

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2 information on that.

3 Q. Pure speculation on your part?

4 MR. BLEAKLEY: Objection.

5 Q. Are you aware that not only did Philip

6 Morris not work with public health officials, but
7 in 1979 actually helped oppose a band on cigarette
8 smoking in a Johns Manville asbestos-producing
9 facility?

10 MR. CONLON: Objection.

11 MR. SCHROEDER: Objection.

12 A. I am not aware of that information.

13 Q. I need to ask you some questions about
14 Philip Morris and their corporate activities.

15 MR. MOTLEY: This will be Exhibit
16 number 20.

17 (Plaintiff's Exhibit 20, affidavit,
18 marked for identification, as of this date.)

19 Q. Number 20, sir, is an affidavit filed in
20 the United States District Court, Southern District
21 of New York by Lyle Graham, vice president of
22 personnel of Philip Morris, Incorporated, and it's
23 dated January 31, 1974. Obviously, you were not
24 with the company at that time.

25 My first question is: Do you know Lyle

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1 Szymanczyk
2 Graham? Have you ever met him?

3 A. No, I don't believe so.

4 Q. Mr. Graham in his affidavit states that
5 he is the vice president, he stated this under
6 oath, of Philip Morris, Incorporated; and then he
7 says, "Philip Morris, Incorporated is a corporation
8 incorporated under the laws of state of the State
9 of Virginia."

10 Then he states, "The principal executive
11 office of Philip Morris, Incorporated is located at
12 100 Park Avenue, New York, New York."

13 I believe you said earlier you have
14 moved to 120 Park Avenue, or did I miss --

15 A. No. Our address today is 120 Park
16 Avenue.

17 Q. Are you aware that at one time the
18 executive office of Philip Morris was on Park
19 Avenue but 100 Park Avenue?

20 A. I think it may have been, but I can't
21 guarantee you that, but I think that that's
22 correct.

23 Q. In any event, today, you would amend
24 that to say that the principal executive office of
25 Philip Morris is located at 120 Park Avenue,

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2 correct?

3 A. I would say that we house our executives
4 and some departments of the company at 120 Park
5 Avenue, yes.

6 Q. The affidavit goes on to say that, "The
7 operations center of Philip Morris, Incorporated is
8 located in Richmond, Virginia."

9 Do you have something today called the
10 operations center or something that would be of the
11 same gist?

12 A. Yes.

13 Q. And is that correct?

14 A. Yes.

15 Q. It says, "As of December 31, 1973 Philip
16 Morris, Incorporated employed a total of 8,534

17 persons in the State of Virginia, and a total of
18 788 persons in New York State."
19 Just by way of estimating --
20 MR. BLEAKLEY: 783.
21 Q. Just by way of approximation --
22 certainly, I don't suppose that you know exactly
23 how many people are in Virginia and how many people
24 are in New York -- does the ratio roughly ten to
25 one still hold true; in other words, do you have

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1 Szymanczyk
2 ten times more employees in Virginia than you do in
3 New York?
4 MR. SCHROEDER: Objection.
5 A. I think that's approximately right.
6 Q. The next paragraph says, "The main
7 manufacturing facilities of Philip Morris,
8 Incorporated are located on property owned by it in
9 Virginia."
10 Is that still correct today?
11 A. Well, a major manufacturing facility is
12 in Virginia. We also have a major manufacturing
13 facility in North Carolina today, and they are
14 pretty close to the same size.
15 Q. On the second page, Mr. Graham says,
16 "There are no manufacturing facilities maintained
17 by Philip Morris, Incorporated in the State of New
18 York."
19 Is that correct today?
20 A. That is correct.
21 Q. And he says, "Philip Morris,
22 Incorporated owns no real estate in New York other
23 than its interest in leasehold."
24 I guess what he means there is you have
25 an interest in leasing a building, but you didn't

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1 Szymanczyk
2 own the building in 1974.
3 Do you own the building at 120 Park
4 Avenue?
5 A. Philip Morris, Incorporated does not own
6 the building at 120 Park Avenue.
7 Q. And then he goes on to say, "The bulk of
8 leaf tobacco owned by Philip Morris, Incorporated
9 is located in Virginia, where its main
10 manufacturing facilities are located."
11 Is that more or so true today?
12 A. I think most of it is there. I think
13 there is tobacco in North Carolina, too.
14 Q. With the exception of the move from 100
15 to 120 Park Avenue, most of the things that
16 Mr. Graham stated under oath, and with the addition
17 of the large North Carolina facility, are as true
18 today in September 2000 as they were on the 31st
19 day of January 1974?
20 MR. BLEAKLEY: Objection to form.
21 MR. SCHROEDER: Objection.
22 A. I'm not sure I understand what you are
23 getting at here. The company today still has a
24 large base of employment in Virginia that covers a
25 range of different functions, and that is the state

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2 in which we have the highest employment. North
3 Carolina would be the state that we have the second
4 highest employment.

5 We have people all over the country in
6 our sales organization, and then we have a group of
7 people, of which I am one, headquartered in New
8 York. But the majority of our people are out in
9 Virginia, North Carolina or the balance of the U.S.

10 Q. With that caveat then, what's stated in
11 this affidavit, except as you have qualified or
12 explained it, is accurate?

13 MR. BLEAKLEY: Objection.

14 A. I can't tell you that it's accurate or
15 not. I'm not sure I would know that it's accurate
16 at that point in time anyway. But I believe what I
17 have said to you is accurate relative to how things
18 are today. I don't know if this was accurate then
19 or not.

20 Q. If we assume this was accurate at the
21 time, then what this said with the qualifications
22 you have stated is true today, correct?

23 MR. SEXTON: Objection.

24 A. I don't know that I would go that far.

25 Q. Is Philip Morris incorporated under the

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1 Szymanczyk
2 laws of the State of Virginia?

3 A. That is true, I believe that's correct,
4 yes. I don't want to split hairs with you. I
5 didn't know exactly what you wanted me to agree to.

6 Q. I understand. I should have been a
7 little more explicit in what I said.

8 Since Philip Morris has stated in its
9 web site that customers or just members of the
10 general public should rely on Surgeon Generals'
11 reports for the information on smoking and health
12 contained therein, that is the current position of
13 Philip Morris, is it not?

14 A. Our position is that people should rely
15 on the Surgeon General and scientific consensus and
16 the information, some of which comes from the
17 Surgeon General.

18 Q. And as I have shown you, you
19 specifically listed some of the Surgeon Generals?

20 A. That's correct.

21 Q. Have you ever heard of the name Horest
22 Kornegay?

23 A. I don't recognize the name.

24 Q. He was a former Congressman who became
25 the chief executive of the Tobacco Institute, and

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1 Szymanczyk
2 he was deposed in the Falise case, and he was asked
3 about Philip Morris's web site.

4 He described the statement in the web
5 site about the overwhelming consensus, scientific
6 and medical consensus, is that smoking causes lung
7 cancer, and he calls that a flip-flop.

8 If you assumed that he said it was a
9 flip-flop, and I can show you the transcript, what
10 do you think he might have meant by that?

11 MR. BLEAKLEY: Objection.

12 MR. SCHROEDER: Objection.

13 MR. CONLON: Objection.
14 A. I don't know.
15 Q. You think he might have meant that prior
16 to your web site you took a different position from
17 what you took on your web site?
18 MR. BLEAKLEY: Objection.
19 Q. I'm sorry, sir?
20 A. I don't know what he meant.
21 MR. BLEAKLEY: Objection.
22 Q. Has Philip Morris contributed any money
23 to Cornell Medical Center in New York relative to
24 their research attempting to improve the techniques
25 that exists for early detection of possible lung

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2 cancer?
3 A. I don't know.
4 Q. Do you believe that early detection of
5 lung cancer techniques are appropriate for people
6 who are long-term smokers to try to ensure the
7 continuation of their good health?
8 MR. SEXTON: Objection.
9 A. I don't know that. I think a medical
10 doctor would be the right person to ask that
11 question.
12 Q. You know Mr. Steve Parish, do you not?
13 A. I do.
14 Q. What is Mr. Parish's position with
15 Philip Morris?
16 A. He is a senior vice president of
17 corporate affairs for Philip Morris Companies.
18 Q. That is the parent of the company that
19 you are the CEO of?
20 A. That's correct.
21 MR. MOTLEY: Would you mark this,
22 please, sir.
23 (Plaintiff's Exhibit 21, minutes of
24 conference of March 7, 2000, marked for
25 identification, as of this date.)

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2 Q. Exhibit number 21, sir, is a
3 transcript of a conference that was held on March
4 the 7th of the year 2000, and it's entitled, "The
5 Future of American Policy Conference."
6 It was a discussion that involved, among
7 other persons, Steven Parish, who you just
8 described, and Dr. Kessler. In this discussion
9 that was recorded, Mr. Parish stated, "I believe
10 that nicotine is a drug."
11 Do you believe, sir, or does your
12 company believe that nicotine is a drug; in other
13 words, does your company agree with Mr. Parish?
14 A. Well, I believe that nicotine is what's
15 called a psychoactive drug.
16 Q. On page 6, Dr. Kessler says, "But no
17 problem saying that it's an addictive drug,"
18 talking about nicotine from the prior page of
19 cigarettes, and Mr. Parish says, "I have no problem
20 saying that."
21 A. Where are you?
22 MR. BLEAKLEY: Page 6.
23 Q. Page 6, and you will see Steven Parish.

24 Dr. Kessler says, "But no problem saying that it's
25 an addictive drug"; and Mr. Parish, who you have

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1 Szymanczyk
2 identified as vice president of your parent
3 company, says, "I have no problem saying that."

4 My question to you, sir, is: Does your
5 company have a problem with saying that nicotine as
6 contained in cigarettes is an addictive drug?

7 A. I think I am more comfortable saying
8 smoking is addictive. I have a little more
9 difficulty when you start to pin me down on what
10 nicotine is and isn't, because I really am not a
11 scientist, and I can't speak on that.

12 Q. I understand that. I accept that
13 answer.

14 Philip Morris U.S.A. purchased some
15 namebrands from the Liggett Corporation sometime in
16 1998.

17 Do you recall that?

18 A. Yes.

19 Q. One of the products it purchased was
20 L&M.

21 Do you recall that?

22 A. Yes.

23 MR. MOTLEY: I would ask the Court
24 Reporter to mark this copy as number 22.

25 (Plaintiff's Exhibit 22, photocopy of

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1 Szymanczyk
2 L&M cigarette carton, marked for
3 identification, as of this date.)

4 MR. MOTLEY: Number 22 purports to be
5 a photocopy of a real carton of L&M
6 cigarettes when they were manufactured by
7 Liggett, at least one side of it.

8 Q. Would you confirm that that is a Xerox
9 copy of that.

10 A. I think this is a carton.

11 Q. Are you aware that when L&M brand was
12 owned by Liggett, that beginning in 1997, I
13 believe, or 1998, I can't recall exactly which
14 date, Liggett began putting an additional warning
15 label on L&M Filter Kings cigarettes that reads:
16 "Warning: Smoking is addictive"? Do you recall
17 that?

18 A. Yes, I do.

19 Q. When Philip Morris purchased the L&M
20 brandname, can you tell the jury whether or not
21 Philip Morris directed that the warning that says
22 "Smoking is addictive" be taken off of the cartons
23 of L&M that Philip Morris was selling? Can you say
24 yes or no first, and then you can explain.

25 A. You are going to have to state your

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2 question again.

3 Q. Did you take the "Warning: Smoking is
4 addictive" off of the L&M packages when you, your
5 company, purchased the L&M brand line?

6 A. To be specific, no, because we didn't
7 purchase their packaging. So the answer to your
8 question is we did not put "smoking is addictive"

9 on the packaging that we created for L&M, but we
10 did not purchase their packaging.
11 I am not nitpicking here, but we didn't
12 remove it from their package because we never
13 bought it.
14 Q. You didn't carry forward the Liggett L&M
15 package which said "Warning: Smoking is addictive"
16 when you put your L&M cigarettes in a carton?
17 A. No, we didn't because we had to produce
18 new packaging. I will explain why we did that, the
19 reason we decided that we should not do that is
20 because the Federal Labeling Law, as we understand
21 it, doesn't give us the latitude to decide what
22 warning labels go on a package of cigarettes.
23 We have no objection to a warning that
24 says "smoking is addictive," and certainly would
25 put it on our packages if that's what the Congress

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1 Szymanczyk
2 said to us they thought we should do. But
3 Congress, which has considered that warning, and,
4 in fact, is continuing to and has before announced
5 some legislation that considers a number of
6 additional warnings on cigarettes, hasn't, in fact,
7 made that determination.
8 And so we, I think, would be hesitance
9 to want to go around the Federal Labeling Act and
10 make a determination for Congress as to what the
11 appropriate language is. And there is some debate
12 as to whether or not that is the appropriate
13 language.
14 So that's the basis on which we decided
15 not to put it on a package, whether it be this
16 package or any other package that we have that's
17 created by Philip Morris.
18 Q. Notwithstanding what you just said, sir,
19 is it not true that Philip Morris has placed an
20 additional warning on your packs of Marlboro
21 admonishing people that smoking under the age of 18
22 is illegal?
23 A. We don't have a warning as to that
24 regard. We simply make a statement that underaged
25 smoking is prohibited.

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1 Szymanczyk
2 Q. So you could put a statement on there
3 that underaged smoking is illegal, but you can't
4 put a warning on there that smoking is addictive?
5 A. Federal Labeling Act is specific to
6 health warnings on cigarettes. Underaged smoking
7 is prohibited is a statement of law, it isn't a
8 health warning.
9 Q. Are you aware that Brown & Williamson
10 places an additional warning on their cigarettes
11 that warns the public that low tar and nicotine
12 figures can be misleading because of smoker's
13 compensation?
14 A. I am aware that they make a statement to
15 that regard, but once again --
16 Q. That's not a warning?
17 A. Well, it's not listed as a warning.
18 It's simply a statement that they make on their
19 packet.

20 Q. And you could make such a statement,
21 too, if you so chose, correct?
22 A. Well, I suppose we could decide to put a
23 statement on there. But again, we have no
24 objection to putting a statement on there. We
25 think that the public health authorities and

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1 Szymanczyk
2 Congress should decide what the language is
3 relative to health warnings and cigarettes, and I
4 think that's an appropriate thing for us to do.

5 MR. MOTLEY: He said we have run out
6 of time on this tape. We will take a short
7 break while he changes it.

8 THE VIDEOGRAPHER: The time is 3:21
9 p.m. This completes tape number 2 of the
10 videotaped deposition of Mike Szymanczyk.

11 (Discussion off the record.)

12 THE VIDEOGRAPHER: The time is 3:38
13 p.m. This begins tape number 3 of the
14 videotaped deposition of Mr. Mike
15 Szymanczyk.

16 Q. Mr. Szymanczyk, I have in my hand a
17 package of Marlboro Ultra Lights 100's, and on the
18 side of it, it has the statement, "Surgeon
19 General's warning: Quitting smoking now greatly
20 reduces serious risks to your health"; and on the
21 same side of that package, it says, "Underaged sale
22 prohibited."

23 Would you agree that the statement about
24 underaged sale is on the same side of the package
25 as the Surgeon General's warning?

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1 Szymanczyk

2 A. Yes.

3 Q. I want to ask you just a few more
4 questions, and then I will be done.

5 Do you have any idea about how many
6 cigarettes per day Philip Morris sells in the
7 United States?

8 A. Per day?

9 Q. Yes, sir.

10 A. No, I don't know exactly. I think it's
11 around, I guess, four billion.

12 Q. Four billion?

13 A. Something around that, that's individual
14 cigarettes. We don't sell them that way, but we
15 count them that way.

16 Q. Philip Morris's most competitive world
17 market cigarette company is British American
18 Tobacco, is that correct, in a market share sense?

19 A. In the world?

20 Q. Yes.

21 A. I believe that B.A.T. is number 2 in
22 terms of size, yes.

23 Q. Are you aware --

24 A. That varies by country by country.

25 Q. I understand that.

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1 Szymanczyk

2 Are you aware of any recent effort by
3 Brown & Williamson to transfer their premium brands
4 to a different company?

5 A. No, I am not.
6 Q. Are you aware of any effort by British
7 American Tobacco to create a new entity called
8 British American Tobacco Company, PLC?
9 A. No, I am not.
10 Q. Can you tell me, sir, how much money,
11 just generally, your company has spent on
12 advertising, marketing and promotion since you took
13 over as CEO in the last two years, just rough
14 estimation?
15 A. Well, I don't know exactly how to answer
16 that.
17 Q. In the United States I meant.
18 A. There is often times when people use
19 records to try to calculate that number. What they
20 do is include in it what is called temporary price
21 reduction, which is accounted for on the marketing
22 line. But what it is, it's temporary pricing. So
23 it's temporary price reduction of the product.
24 So you have to subtract that out to
25 really get to what is true advertising and

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1 Szymanczyk
2 promotion, because a majority of that number is
3 primary pricing, and I just haven't done that. I
4 can't tell you that off the top of my head.
5 Q. A number was utilized in Congressional
6 testimony in 1997 of \$6 billion being spent on
7 promotion of whatever type, advertising and
8 marketing, by the cigarette industry.
9 Do you have any reason to dispute that
10 number?
11 A. I would say that number includes
12 temporary pricing.
13 MR. MOTLEY: Would you mark this next,
14 please.
15 (Plaintiff's Exhibit 23, letter,
16 marked for identification, as of this date.)
17 Q. Number 23, sir, purports to be a
18 letter or communication written by yourself as
19 senior vice president of sales of Philip Morris to
20 an entity called Dear Partner.
21 I have reason to believe that this went
22 out to various wholesalers and retailers of various
23 Philip Morris brands. But I would ask you to
24 confirm that for me, sir.
25 A. I don't know what this is.

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1 Szymanczyk
2 Q. Do you recognize that?
3 A. No, I really don't. I think -- it
4 appears to me to be a letter directed to the
5 supermarket industry.
6 Q. Supermarket industry?
7 A. Yes. Cigarettes are sold through a
8 large range of variety of businesses, convenience
9 stores. This would appear to be a letter directed
10 to the supermarket industry, which also sells
11 cigarettes.
12 Q. Do you know a person employed by Philip
13 Morris whose name is Tina Walls?
14 A. I know who Tina Walls is. She is not
15 employed by Philip Morris, my company.

16 Q. Who is she employed by?
17 A. I believe she works for Miller Brewing
18 Company, which is owned by Philip Morris Company.
19 Q. Do you know whether she at one time did
20 work for Philip Morris?
21 A. I believe she did at one time, yes.
22 Q. Do you know whether Philip Morris has
23 ever undertaken a study to ascertain how much it
24 would cost the company if its customers smoked,
25 let's say, one and a half less cigarettes a day

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1 Szymanczyk
2 because of workplace restrictions on smoking?
3 A. I am not aware of that.
4 Q. Let me ask you just simply: Are you
5 aware that the blue collar workers are the most
6 loyal customer base for the Marlboro brand?
7 A. No, I have not seen data that would
8 support that.
9 What do you mean by that?
10 Q. They smoke more of your cigarettes and
11 tend to stay more loyal to your brand than other
12 groups of your customers.
13 A. No, I am not aware -- I have not seen
14 research that would support that. I am not denying
15 that it might not be true, but I wouldn't -- I have
16 never seen research that actually identifies what
17 you were describing as blue collar.
18 What do you mean by "blue collar"?
19 Q. People who work in industries with their
20 hands, mechanical work, things like that.
21 A. Generally, research is done by age,
22 income, education and so on and so forth in terms
23 of determining an understanding who uses your
24 product.
25 I don't know of any research that

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1 Szymanczyk
2 specifically identifies by workplace or what the
3 work of people is relative to Marlboro.
4 Q. Mr. Szymanczyk, there is a memorandum
5 from a vice president of R.J. Reynolds to another
6 official of R.J. Reynolds in 1985 that states that,
7 "By virtue of the demographics of the workforce, at
8 least 80, and in some cases 90 percent of the
9 workers who are exposed to asbestos also smoke."
10 Does Philip Morris, to your knowledge,
11 have any data that would contradict that?
12 MR. SCHROEDER: Mr. Motley, could you
13 tell me what document that is. Is that a
14 Bliley document?
15 MR. MOTLEY: It's dated Motley 12419.
16 I do not know if it's a Bliley document or
17 not because it's from one scientist to a
18 lawyer. But the scientist at the time was a
19 scientist of a legal department.
20 MR. SCHROEDER: Is that Dr. Collucci?
21 MR. MOTLEY: Yes. So your
22 reservations are noted on the record.
23 Q. Do you have any information that would
24 contradict the statement of Dr. Collucci to
25 Mr. Newton in 1985, that at least 80, in some cases

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1 Szymanczyk
2 90 percent of the workers who are exposed to
3 asbestos also smoke?
4 MR. SCHROEDER: Objection.
5 A. I am just not aware of information
6 relative to that subject. So --
7 Q. That's fine. This is the last document
8 I am going to ask you about, and then I will be
9 done.
10 (Plaintiff's Exhibit 24, Philip Morris
11 U.S.A. interoffice correspondence, marked
12 for identification, as of this date.)
13 MR. MOTLEY: Number 24 purports to be
14 a Philip Morris interoffice correspondence
15 from Myron Johnson to Harry Daniel, dated
16 July 12, 1982, subject: The effect of an
17 excised tax increase on Philip Morris sales.
18 Q. Realizing you weren't with the company
19 at the time, nevertheless, I want to ask you a
20 question about this.
21 Did you know who Mr. Myron Johnson was?
22 A. No. I know the name, but I don't know
23 who he is.
24 Q. Or Mr. Harry Daniel?
25 A. No.

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1 Szymanczyk
2 Q. Look on page 2, please, sir. In the
3 middle of the page, the paragraph that starts out,
4 "It is, however."
5 A. Yes.
6 Q. It is written here that, "It is,
7 however, the changes that have taken place in the
8 educational and occupational characteristics of
9 smokers of Marlboro Red that give me the greatest
10 cause for optimism. A decade ago, the typical
11 Marlboro smoker was a college-educated white-collar
12 worker. Now its market share is highest among blue
13 collar workers and those who have not been to
14 college."
15 Have you seen this document prior to
16 today?
17 A. No.
18 Q. Do you recall when you were in the
19 marketing function of Philip Morris whether such
20 studies of demographics other than age groups were
21 conducted?
22 A. Well, as I mentioned, I have seen
23 demographic studies that show education and so on
24 relative to our business. As I recall the numbers,
25 it's something in the range of around 45 to 47

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1 Szymanczyk
2 percent, I believe, of people who use cigarettes
3 have had some college education and the remainder
4 have not.
5 So it's kind of pretty close to split.
6 That may have changed over time. I don't know what
7 the relevant numbers are historically. But we have
8 data that shows age, education, age of adult
9 smokers, education and then income. Those are the
10 normal things that consumer packaging companies
11 would try to understand about their consumers.

12 Q. The last sentence of that same paragraph
13 on page 2, Mr. Johnson writes, "Blue collar workers
14 and the noncollege educated are more likely to
15 start smoke and less likely to quit than are the
16 college-bound and white-collar workers."

17 Are you aware of any current data that
18 would refute that statement of Mr. Johnson in 1982?

19 A. Well, I don't know whether the statement
20 was true then, and I certainly don't know now.

21 MR. MOTLEY: True to my word, I'm
22 done. True to my word as amended twice, I'm
23 done.

24 MR. HEFTER: Why don't we go off the
25 record for a minute or two so we can move

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1 Szymanczyk
2 some boxes that way.

3 MR. MOTLEY: The deposition that I
4 just concluded was in the Blankenship case
5 and the Falise case; now the Blue Cross case
6 is starting its own deposition.

7 So we may have misled you at the start
8 into thinking that all three cases were
9 going to be in the same volume, when, in
10 fact, Falise and Blankenship are in the same
11 volume, and Blue Cross is in a different
12 volume. You got that?

13 MR. HEFTER: It's cross-noticed.

14 MR. MOTLEY: Forget what I said.

15 THE VIDEOGRAPHER: The time is 3:56
16 p.m. We are going off the record.

17 (Discussion off the record.)

18 THE VIDEOGRAPHER: The time is 4:03
19 p.m. We are back on the record.

20 EXAMINATION BY

21 MR. HEFTER:

22 Q. Mr. Szymanczyk, I will introduce myself
23 on the second time. I hope I am pronouncing your
24 name correctly.

25 A. You are.

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1 Szymanczyk

2 Q. And, I will try to throughout the
3 portion of this deposition.

4 My name is Michael Hefter, and I
5 represent the Blue Cross/Blue Shield clients, and I
6 am from Dewey Ballantine.

7 You started at Philip Morris in October
8 of 1990; is that correct?

9 A. That's correct.

10 Q. And I believe you stated in your Engle
11 testimony, testimony in the Engle trial, that you
12 thought that the tobacco industry was a
13 controversial business at the time.

14 MR. SEXTON: Objection.

15 A. I said that when I was first
16 approached by Philip Morris, I felt like it was a
17 controversial industry, that people had varying
18 views on smoking. It just wasn't a business that I
19 had ever thought about.

20 Q. Nevertheless, you testified that you
21 thought it was the responsible thing to do, to take
22 the position at Philip Morris; is that correct?

23 A. Well, in 1990, actually, it's kind of
24 interesting, Philip Morris was listed in Fortune
25 magazine as the second most admired corporation in

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1 Szymanczyk
2 America.

3 I never thought of myself as being in
4 the tobacco business. When I talked to some
5 particular friend, mentor, actually, of mine, I
6 mentioned to him -- he had asked me what I was
7 going to do, because I was in the process of
8 considering some other opportunities, because I had
9 just completed the sale of a company I was working
10 for and was going to move on to something else.

11 In that conversation, he asked me who I
12 was looking at, and I mentioned Philip Morris is
13 one of the companies; but I also mentioned that I
14 wasn't going to pursue that opportunity, and he
15 asked me why.

16 So I explained it as much I have
17 explained to you, that it's a controversial
18 business, and I never saw myself in the tobacco
19 business.

20 His comment to me was that he had always
21 thought that the most difficult and most
22 controversial businesses were the ones that
23 required the best people, and that that was not a
24 good reason to not go into that kind of business.
25 If nobody who was responsible would make a decision

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1 Szymanczyk
2 to go into a difficult business, then what kind of
3 businesses would we have. So I thought that was
4 probably a pretty good piece of wisdom.

5 I am not going to tell you that I made
6 my decision entirely on that, but that was one of
7 the considerations I had, and my wife and I took a
8 look at the company, and ultimately felt like
9 Philip Morris was a very good company, and it had
10 an excellent reputation, as I said, at the time.
11 So I made the decision to go work.

12 Q. You testified before that people had
13 different views regarding the tobacco industry.

14 Would it be fair to say that at the time
15 your understanding was that certain people believed
16 that smoking caused disease, and other people
17 believed that there wasn't a casual relationship
18 established?

19 A. No. I mean, I believe smoking was bad
20 for your health at the time I joined the company,
21 and I think pretty much everybody believed that.

22 So that wasn't really the issue as much
23 as it was that I think some people, you know --
24 people debate over whether smoking is something
25 that people shouldn't do altogether or where they

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1 Szymanczyk
2 should smoke, when they should be allowed to smoke
3 and not allowed to smoke and so on. I think really
4 that was more the kind of controversy I was talking
5 about. It wasn't really a controversy of whether
6 or not smoking was bad for your health, because I
7 grew up with that understanding.

8 Q. Did you understand at the time that the
9 company's position with respect to causation was
10 that in any given individual person, you could not
11 prove that smoking was the cause of that
12 individual's disease at the time in 1990?

13 A. You are asking me at the time I joined
14 the company?

15 Q. Yes.

16 A. No. I did not explore that in that kind
17 of detail. I had come to learn more of the
18 specifics related to the science around smoking and
19 health as my career progressed.

20 At the time I joined the company, I was
21 aware of what it said on the pack, what the Surgeon
22 General said, I had grown up with that. My parents
23 had told me smoking was bad for you, bad for your
24 health. My coaches had told me smoking was bad for
25 your health. So I grew up believing that smoking

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1 Szymanczyk
2 was bad for your health. That didn't keep me from
3 smoking sometimes. Sometimes I made the decision
4 to smoke as an adult.

5 But I believed that, based upon what I
6 learned as I grew up, both as a teenager and then
7 later on as a young adult, and in my early career
8 with Proctor & Gamble, which is where I worked
9 longer than anywhere.

10 Q. At that time in 1990, were you aware of
11 the company's position with respect to whether
12 cigarette smoking was addictive?

13 A. Well, no, I did not have a conversation
14 with anybody on the subject of smoking and
15 addiction. My general presumption was based on
16 what my personal knowledge was, smoking was a habit
17 that was hard to quit.

18 Again, I grew up with people calling
19 cigarettes coffin nails and saying people were
20 slaved into cigarettes and so forth. So I pretty
21 much assumed that cigarettes were hard for people
22 to quit when I went to work for the company.

23 Q. But at that time, you didn't have an
24 understanding what the company's position was with
25 regard to whether smoking was addictive?

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1 Szymanczyk

2 A. No, I did not.

3 Q. You didn't ask anybody at the company
4 what their position was?

5 A. No, I did not.

6 Q. Did you ask anybody at the company when
7 you were interviewing there and meeting with some
8 senior executives at the company what their
9 position was on whether smoking causes lung cancer?

10 A. Not that specifically; but I recall, and
11 I can't actually recall who it was with, discussing
12 the fact that smoking in the company's viewpoint
13 was a risk factor for a number of diseases, one of
14 which was lung cancer.

15 Q. Did you raise your concern that the
16 tobacco industry was a controversial business with
17 the people, with the executives, with whom you had
18 met?

19 A. Obviously, they knew that, because I
20 told them that when they initially approached me.
21 I just never thought of myself as being in the
22 tobacco business, and I thought of it as a
23 controversial business.
24 Q. What was their response to you?
25 A. Their response was you need to come and

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1 Szymanczyk
2 understand a bit more about the business, and we
3 believe you can add some value to the business.
4 You need to understand that some of the
5 people I was talking to at this point in time were
6 people that I knew from Kraft; because when I left
7 Proctor & Gamble, I went to work for Kraft. When I
8 was at Kraft, Philip Morris purchased Kraft. So by
9 that time, some of the people in Philip Morris that
10 I was talking to were people that I knew from the
11 Kraft food business.
12 Q. Prior to 1990 and prior to you joining
13 Philip Morris, were you aware of any public
14 statements by the tobacco company regarding smoking
15 and health?
16 A. Not really, no.
17 Q. You never read a newspaper where the
18 companies had made a statement about smoking and
19 health?
20 A. I could not recall ever seeing that
21 information.
22 Q. You don't remember any news report, Face
23 the Nation, any Sunday morning talkshow, where
24 cigarette companies may have represented a
25 statement regarding smoking and health?

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1 Szymanczyk
2 A. No. I remember because my dad used to
3 get the Reader's Digest. I remember my father
4 making me read some articles in the Reader's
5 Digest, but I do not remember any specific
6 advertisements relative to the tobacco companies or
7 that were run by the tobacco companies during the
8 time that I was in high school or as a young adult.
9 In fact, I couldn't have told you then
10 who made Marlboro in terms of the tobacco company.
11 At least, I never saw any of those things. Maybe
12 that says something about the fact that I never
13 watched political programs on television while I
14 was growing up.
15 Q. Since joining Philip Morris in 1990 and
16 up to the present, have you been made aware of
17 statements that the company made prior to 1990
18 regarding smoking and health?
19 A. Only things that have been shown to me,
20 for example, this kind of circumstance.
21 Q. What about the 1994 Congressional
22 testimony from the CEOs of the various tobacco
23 companies, were you aware of that?
24 A. Obviously, I was with the company. I
25 thought you were talking about prior to the time I

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1 Szymanczyk
2 was with the company.
3 Q. I am switching subjects on you in some

4 part. But were you aware of those statements?
5 A. I am aware of some of what was said. I
6 haven't read the transcripts from all of that.
7 Q. Did you find the statements of the CEOs
8 credible during those Congressional hearings?
9 A. Which Congressional hearings are you
10 talking about?
11 Q. Who was the representative of Philip
12 Morris at the Congressional hearings in 1994 by the
13 Waxman Committee?
14 A. I believe it was Bill Campbell.
15 Q. Isn't it correct that Mr. Campbell
16 testified that smoking is not addictive?
17 A. I believe that's correct, yes.
18 Q. Did you find Mr. Campbell's statement
19 credible?
20 MR. SCHROEDER: Objection to form.
21 A. I don't know what the basis was that
22 Mr. Campbell made that statement. I don't think
23 that's the right statement for us to make. It
24 certainly isn't a statement that I would make
25 relative to smoking. But there has been

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1 Szymanczyk
2 historically an evolution in the definition people
3 have used for addiction. The Surgeon General even
4 changed his definition for "addiction" over time.
5 So I can't speak to under what basis
6 Mr. Campbell made that statement because I haven't
7 asked him about it. But I would not make that
8 statement myself in the context of today, and what
9 I believe people view as the definition of
10 "addiction" for today, particularly as it relates
11 to cigarettes.
12 Q. I am not asking you about what the basis
13 of Mr. Campbell's testimony was. I'm asking you
14 when you heard that statement -- let me ask you
15 this question: Did you hear that statement back in
16 1994 when he made that statement?
17 MR. BLEAKLEY: If you are going to
18 keep asking him questions, then you ought to
19 state what Mr. Campbell actually testified,
20 which is not that cigarette smoking is not
21 addictive, but that I believe cigarette
22 smoking is not addictive.
23 MR. HEFTER: I don't have any reason
24 to believe that that's not right, but we
25 might as well get the transcript.

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1 Szymanczyk
2 MR. MOTLEY: I can give you the
3 written statement that Mr. Campbell made if
4 that would be helpful to you with respect to
5 the precise question that has been asked.
6 MR. HEFTER: Can I take a look at
7 that.
8 MR. MOTLEY: Certainly.
9 MR. HEFTER: Let me mark as Exhibit
10 25, which, for the record, is a statement of
11 William I. Campbell, president and chief
12 executive officer of Philip U.S.A., dated
13 April 14, 1994.
14 (Plaintiff's Exhibit 25, statement of

15 William I. Campbell, marked for
16 identification, as of this date.)
17 A. So what is it that you are referring to?
18 Q. I am referring to the first paragraph
19 five lines up, it says "forth."
20 A. I have never seen it before, so I don't
21 know specifically what it is.
22 MR. MOTLEY: It's a written statement
23 of Mr. Campbell that he submitted to
24 Congressman Waxman's committee.
25 A. So this is not his actual testimony?

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1 Szymanczyk
2 MR. MOTLEY: He asked you about his
3 verbal testimony, this is his written
4 testimony.
5 A. I have never read his written
6 testimony.
7 MR. MOTLEY: And I don't mean to
8 intercede, just to clarify.
9 MR. HEFTER: Thank you, Ron.
10 Q. Let me ask you a separate question: Do
11 you have an understanding as to what the testimony
12 of Mr. Campbell was before the Waxman Committee?
13 A. Only the part that I have seen on TV.
14 Q. What did you see on TV? What's your
15 recollection of what you saw on TV?
16 A. I saw the answer to a question, I can't
17 remember who it was who asked it, where he asked
18 all the CEOs a yes or no question, and he only
19 allowed them to answer yes or no.
20 Q. What was Mr. Campbell's response?
21 A. The question was, "Was smoking
22 addictive?" And Mr. Campbell's response was "No."
23 But I don't know what else Mr. Campbell said in his
24 further testimony or in his written testimony.
25 Q. I understand that.

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1 Szymanczyk
2 When you heard that on TV, did you find
3 that statement to be credible?
4 MR. SCHROEDER: Objection.
5 MR. BLEAKLEY: Objection. Asked and
6 answered.
7 Q. You can answer.
8 MR. BLEAKLEY: You can answer.
9 A. I found -- actually, I found the
10 circumstance to be a bit unfair, in that he was
11 asked and only allowed to say yes or no, rather
12 than to explain his answer. So that was actually
13 what my reaction was.
14 Q. When you heard that, did you find the
15 statement to be credible?
16 MR. BLEAKLEY: Objection.
17 A. I think I have answered the question.
18 Q. I don't think you have answered the
19 question.
20 MR. SCHROEDER: Objection.
21 A. It's the best answer I can give you.
22 Q. You were in sales from 1990 to 1994 as
23 the senior vice president of sales of Philip
24 Morris; is that correct?
25 A. Yes, I believe that's right.

1 Szymanczyk

2 Q. And approximately 1994 to 1996 you were
3 the executive vice president in charge of marketing
4 and sales; is that correct?

5 A. That's correct, I believe, yes.

6 Q. During that time period, did you have
7 the ultimate responsibility to approve advertising
8 campaigns for Philip Morris brands?

9 A. No. The ultimate responsibility during
10 that period of time to approve an advertising
11 campaign would have resided with the president and
12 CEO of the company.

13 Q. Since the time that you have become the
14 president and CEO, do you have ultimate authority
15 to approve advertising campaigns?

16 A. I do, yes.

17 Q. Did you have the ultimate authority to
18 approve the lunching and content on the web site
19 that was launched on October 13, 1999?

20 A. Well, I with a group of other people.
21 But ultimately, I made the decision to go ahead and
22 approve what we put on the web site.

23 Q. Can you describe for me what the Retail
24 Leaders program is?

25 A. Sure. The Retail Leaders program is

1 Szymanczyk

2 what's called a merchandizing program that we
3 provide, we make available, to all retailers that
4 sell our products, provide them with principles by
5 which they merchandize cigarettes in the store; and
6 in return, we make payments to them to manage our
7 products in their store within certain guidelines.

8 Q. And it's true, is it not, that Philip
9 Morris was sued by Lorillard Tobacco Company
10 regarding its practices in the Retail Leaders
11 program?

12 A. There is a piece of pending litigation
13 relative to Retail Leaders, yes.

14 Q. That was brought by Lorillard Tobacco
15 against Philip Morris, correct?

16 A. I believe it was originally brought by
17 R.J. Reynolds, but I believe Lorillard is a party
18 to that lawsuit.

19 Q. Given your background in marketing and
20 sales at least for those six years in the company,
21 would you agree with me that in-store signage is an
22 important marketing factor in the cigarette
23 industry?

24 A. Well, I would say that positioning your
25 package in any category so that the consumer who is

1 Szymanczyk

2 looking for your product can find it is an
3 important criteria for marketing a product.

4 So our objective with our program is to
5 have people make sure that they are in stock, that
6 the product is available and visible for the
7 consumer to buy, and actually, we have minimal
8 signage requirements relative to our products.

9 Actually, our highest level program has
10 historically required only one sign for the whole

11 store from a cigarette point of view and not a
12 large sign.
13 So signage plays a role because it tells
14 people that the store sells cigarettes. But I
15 think what's more important is distribution of the
16 product and remaining in stock on the product, so
17 when the consumer that's looking for your product
18 comes in to buy it they can get it, it's available
19 to them.
20 Q. Would you agree with me that shelf space
21 is an important marketing factor in the cigarette
22 industry?
23 A. I will say to you that for any packaged
24 goods category being in stock is an important
25 criteria, so when the consumer comes in the store,

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1 Szymanczyk
2 you are in stock, the retailer is in stock.
3 Shelf space is one way the retailer uses
4 to allocate space to the sales of the product, so
5 that they are in stock; because, they get an order
6 every so often, and they have to allocate their
7 space based on share of sales in order to maintain
8 an in-stock condition.
9 Q. When you first came to the company in
10 1990, did you view your mandate as the senior vice
11 president of sales to change the sales practices of
12 the company in any way?
13 A. Well, my focus when I was a senior vice
14 president of sales was really to, first of all,
15 understand the business and to focus -- I focused
16 on a number of things related to reorganizing the
17 sales organization related to training and
18 development of the people, related to recruiting, I
19 started a college recruiting program with the sales
20 organization, related to what we call better
21 category management principles.
22 It was what I would describe as a very
23 cluttered category in stores. And I was focused on
24 trying to give retailers good principles that
25 allowed them to manage the category, reduce shrink

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1 Szymanczyk
2 in the category, minimize unnecessary inventory and
3 unnecessary signage in their stores so that they
4 could better manage their business.
5 So there were a range of activities that
6 I was focused on relative to the sales
7 organization.
8 Q. During that time period, you were
9 responsible for advertising of the Philip Morris
10 brands?
11 A. No.
12 Q. When you became executive vice president
13 of marketing and sales, were you responsible for
14 advertising of the Philip Morris brands?
15 A. No. The senior vice president of
16 marketing would have been responsible for
17 advertising per se.
18 Q. And that person reported to you?
19 A. And that person reported to me, yes.
20 Q. Did you make any changes to the
21 company's advertising practices during the time

22 that you were the executive vice president of
23 marketing?
24 A. What do you mean by that?
25 Q. Did you pull any advertisements from any

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1 Szymanczyk
2 magazines during that time period because they
3 potentially could reach young smokers?
4 A. No, I did not. Actually, during the
5 time that I was executive vice president of
6 marketing and sales, what we did is we launched a
7 program called Action Against Access, which was a
8 program that had a range of different things that
9 were involved with making sure that kids was denied
10 access, big education program that we worked on
11 through a retailer coalition call We Card.
12 So there were a range of different
13 things with the Action Against Access program that
14 were designed to have an impact on underaged
15 smoking and to reduce underaged smoking. They
16 weren't advertising related, they were access
17 related.
18 Q. But you did at that time remove any
19 advertisements from any magazine because of any
20 concerns because the advertisements were being read
21 by young people?
22 A. We had a code that we used relative to
23 placement of advertising that was related to
24 circulation. So we had an established criteria for
25 circulation when I went into that job, and that

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1 Szymanczyk
2 criteria has been strengthened over time. But
3 there was already a criteria in place.
4 Q. During that time, did you advertise in
5 Sports Illustrated?
6 A. Yes, we did, yes.
7 Q. Did you advertise in Rolling Stone
8 during that time period?
9 A. We did, yes.
10 Q. What were some of the magazines that you
11 didn't advertise in during that time period?
12 A. I don't have the answer with me.
13 Q. What was the criteria for circulation
14 that you used during that time period?
15 A. You know, I believe that the circulation
16 had to be 75 percent 21 or above. I believe that's
17 correct.
18 Q. Isn't it true that during this time
19 period, I believe in 1996, that the FDA came out
20 with its proposed regulations on the quote/unquote
21 15 percent rule?
22 MR. BLEAKLEY: Objection.
23 You can answer.
24 A. The FDA came out with some proposed
25 regulations relative to readership, not

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1 Szymanczyk
2 circulation, they were relative to readership, and
3 the criteria was 85 percent 18 years of age. 85
4 percent had to be 18 or older of readership.
5 The issue with the FDA criteria, which
6 continues to be an issue, is that the data that

7 exists, the readership data that exists, is not of
8 the quality that I think we would all like it to
9 be, nor does it cover all of the range of
10 publications that exist.

11 Circulation data, obviously, is
12 available for most publications. But nonetheless,
13 we today operate with both criteria; we use a
14 criteria of 21 or above for circulation for all
15 magazines, and then for all magazines where
16 readership data exists, we use the FDA proposed
17 criteria of 85 percent 18 years of age or older.

18 We are working with the AGs actually in
19 developing a readership service that would be
20 available for all publications to use, so that
21 there is a standardized methodology that everybody
22 could use to determine adult readership versus
23 younger adult readership.

24 Q. It is true, is it not, that in 1986
25 Philip Morris opposed the promulgation or the

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1 Szymanczyk
2 enactment of the 15 percent rule by the FDA?

3 A. Philip Morris opposed the FDA rule on
4 the basis that the FDA had not been granted the
5 authority to regulate tobacco; and ultimately, that
6 opposition was upheld by the Supreme Court.

7 Q. During that time period, you didn't
8 voluntarily comply with the FDA's 15 percent rule?

9 A. No, we did not.

10 Q. It was only until, I believe, this past
11 year that you started complying with the FDA rule,
12 the 15 percent rule?

13 A. Well, what happened was we entered into
14 the Master Settlement Agreement with the states'
15 Attorneys General, and there were a range of
16 different advertising restrictions that were a part
17 of the Master Settlement Agreement; and we agreed to
18 those, and advertising in print and readership
19 criteria was not a part of the Master Settlement
20 Agreement.

21 So that was not an area that was the
22 focal point from the Master Settlement Agreement,
23 even though it was in that original FDA rule that
24 was proposed.

25 But once we had enacted the Master

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1 Szymanczyk
2 Settlement Agreement, and after we had had a chance
3 to put the provisions of that Agreement in place,
4 which included taking down all our outer-home
5 advertising, which would be all the billboard
6 advertising, stadium advertising, which had been
7 the mass of the advertising in tobacco, we began in
8 some conversation with the team of Attorneys
9 General that we were assigned on the subject of
10 what I call "raising the bar"; what other things
11 could we do that would make good sense that would
12 allow us to both compete in the marketplace,
13 because we do have an obligation to compete in the
14 marketplace, to build market share relative to our
15 competitors, we have that obligation to the people
16 who are the shareholders of the company; but at the
17 same token, make sure that we are doing what we

18 could do that makes good sense relative to trying
19 to deal with some of the issues that the Surgeon
20 General has identified regarding youth smoking.
21 One of those issues that the Surgeon
22 General has raised is what they call really the
23 prevalence of smoking activity related to a number
24 of things; marketing is one, cigarette smoking in
25 movies and so on that cause some kids to believe

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1 Szymanczyk
2 that smoking is more prevalent in society than it
3 actually is.
4 So in discussions with the Attorneys
5 General when actually they felt that we did have a
6 very good circulation program in place in terms of
7 placing our advertising, one of the things they
8 asked us if we would look at was readership,
9 understanding that there was some issues related to
10 the data around readership. So we agreed to do
11 that, we actually agreed to do it last December.
12 We agreed to look at a subject called back covers
13 on magazines. Many advertisements are placed on
14 the back cover of a magazine.
15 We decided to look at that on the basis,
16 gees, when a magazine is in a doctor's office or
17 something, if it's turned faced down, on the back,
18 if there is an ad, the potential exists for a kid
19 to be exposed to it.
20 We made some decisions just to be
21 prudent, and understanding that in a Surgeon
22 General's report, a lot of the literature, the
23 major factors for underaged smoking are in
24 advertising. There are other factors. But
25 understanding that this is an item that the Surgeon

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1 Szymanczyk
2 General had indicated that should be dealt with,
3 which is lowering this overall amount of marketing,
4 we decided to take a leadership position, remove
5 our advertisements from back covers; and
6 subsequently made a decision to put in a criteria
7 that was an identical criteria to the FDA
8 leadership criteria.
9 We have now applied that, and it's in
10 the process of taking effect. That's kind of the
11 history of how this has evolved.
12 I hope I haven't given you more than you
13 wanted, but that's the history.
14 Q. There is a lot there. Let me try to
15 break it down.
16 The Master Settlement Agreement was
17 entered into November 1998; is that correct?
18 A. That's correct.
19 Q. And the team of Attorneys General that
20 is assigned, I take it, to Philip Morris includes
21 Attorney General Gregoire from the State of
22 Washington?
23 A. Yes.
24 Q. Isn't it true in May of this year, May
25 2000, Attorney General Gregoire raised concerns

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1 Szymanczyk
2 that Philip Morris was continuing its advertising

3 in certain magazines that had the risk of reaching
4 young people?

5 A. Attorney General Gregoire in the
6 meetings that I had with her in the telephone
7 conversations didn't raise a concern to me. What
8 she did is she asked if we could look into this,
9 whether or not readership ought to be a criteria
10 that we use. But actually, the indication we got
11 was that the methodology we had in place was
12 actually the best methodology that existed at that
13 point.

14 They were asking us if we could further
15 that and see if readership was a criteria we could
16 use, and we agreed to do that, and subsequently
17 after that review, we did.

18 Q. When was that?

19 A. That was in the -- I believe we actually
20 did it in May or June of this year. We did back
21 covers, I think, in April. That was the first
22 step. And then we followed that with the
23 readership, because we had to get -- there are two
24 readership services, and we had to get them both
25 and do an analysis of both of them before we could

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1 Szymanczyk
2 make a decision.

3 Q. You criticized the methodology that both
4 of those services have used to determine
5 readership?

6 A. The methodology would indicate -- when
7 you look at the two services, they conclude
8 different numbers for the same publications, which
9 is something I think you have to be concerned about
10 as a statistician. They also don't cover the full
11 range of publications that are out there.

12 When you look inside their
13 methodologies, I think their methodologies would
14 show things, at least to a market researcher, that
15 says there is some significant room for error to
16 take place and for broad variations to exist in the
17 data that may not make it reflective of what
18 reality is.

19 It's the best data that exists, and we
20 have gone ahead and used it, but what we have also
21 said to the Attorneys General, we have offered to
22 participate and, in fact, lead the effort; in fact,
23 I will be meeting with them this month on this
24 subject, to get a readership service in place that
25 they are comfortable with, and use that as the

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2 established standard in which all advertising
3 decisions are made.

4 Q. You have called for, at least Philip
5 Morris has called for, the selection of what you
6 would call an independent third party to look at
7 the readership data?

8 A. In any case, it's not going to be
9 something we do. So it will have to be an
10 independent third party, and it will have to be one
11 that is acceptable to the Attorneys General.

12 Q. But has Philip Morris publicly called
13 for the selection of an independent third party to

14 look at --
15 A. We called for it with the AGs. I don't
16 know what you mean by "publicly."
17 Q. When did you have your first telephone
18 conversation with Attorney General Gregoire
19 concerning this issue?
20 A. The first time we discussed it was in
21 December of 1999.
22 Q. Prior to December 1999, Philip Morris's
23 advertising was advertising in Sports Illustrated;
24 is that correct?
25 A. Yes. But keep in mind the Master

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1 Szymanczyk
2 Settlement Agreement was done at the end of 1998,
3 and then the year of 1999 really was taken up with
4 implementation of that.
5 So a significant amount of our
6 advertising came down in 1999 because we were
7 taking down all of our billboard advertising,
8 stadium signage and so on. So once that was
9 completed, we then began to move on to some other
10 areas of advertising.
11 Actually, if you look at the numbers
12 today with the execution of the readership
13 information that we have applied to our print
14 advertising, we will have made a 90-percent
15 reduction in advertising images conveyed versus a
16 pre-Master Settlement Agreement period.
17 So we made a substantial reduction in
18 advertising, and we have done that to try to
19 respond and lead in this area, lowering the profile
20 of cigarette marketing in this country.
21 Q. I take it from your answer that prior to
22 the Master Settlement in November of 1998 that
23 Philip Morris and the company had information
24 regarding readership data of the magazines in which
25 it advertised?

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1 Szymanczyk
2 A. Well, again, these are services. It's
3 not data that Philip Morris has. They are
4 services, they are available services.
5 Q. I didn't mean to suggest you had Philip
6 Morris's own data. But you had data from third
7 parties?
8 A. I can't tell you that we had the data.
9 We knew the services were available, but I can also
10 tell you we knew that the services were not
11 complete services in terms of the quality of the
12 data.
13 Q. You just testified that as compared to a
14 pre-Master Settlement Agreement time that you made
15 great strides in reducing the number of
16 advertisements in magazines where the readership
17 might get out to young people.
18 A. In advertising in general. You are
19 focused on magazines, but the majority of the
20 advertising was out-of-home advertising, was
21 billboard advertising.
22 Q. Isn't it true that your advertising
23 expenditures for 1999 exceeded 1998?
24 A. You know, I don't remember. They would

25 have in 1999 because we had a dual cost, as you may

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1 Szymanczyk
2 recall; we paid for the billboards in 1999 but
3 turned them over to the Attorneys General to run
4 youth smoking prevention advertisements. So we
5 would have had that cost, even though it wasn't our
6 advertising.

7 And then we had print advertising, and
8 some of our print advertising cost went up. So the
9 net could have been more, but that doesn't mean the
10 advertising was greater.

11 Actually, the advertising was
12 substantially less because we took down all of our
13 out-of-home advertising. We still paid for it,
14 though, because it turned into some other kind of
15 advertising, it turned into anti-smoking
16 advertising.

17 Q. So what you are telling me is that in
18 1999, your expenditures for quote/unquote cigarette
19 advertising was greater, but --

20 A. You are telling me that they were
21 greater. I can't remember. I am telling you what
22 happened and why they might have been greater,
23 because we were paying for something that would
24 have been charged as advertising that wasn't
25 cigarette advertising.

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1 Szymanczyk
2 It was anti-smoking advertising that was
3 run by the Attorneys General of the states on the
4 billboards that we had contracted until the
5 contracts ran out.

6 Q. Do you know one way or the other whether
7 cigarette advertising, excluding whatever
8 advertising on anti-smoking --

9 A. Cigarette advertising in 1999?

10 Q. Yes. Any idea whether cigarette
11 advertising one way or the other increased from
12 1999 to 1998?

13 A. I doubt it.

14 Q. I believe my question is whether you
15 know one way or the other whether cigarette
16 advertising, excluding whatever anti-smoking
17 advertising was going on, was greater in 1999 than
18 in 1998?

19 A. It went down, and the reason why it went
20 down is because we eliminated all of our
21 out-of-home advertising, our billboards and so on.

22 Q. Do you know whether the company had any
23 information prior to November 1998 of magazine
24 readership data for the magazines in which it
25 advertised in?

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1 Szymanczyk

2 A. We had the circulation data, and we may
3 have had some readership data.

4 Q. In any of that data, were you
5 advertising in magazines where greater than 15
6 percent of the readership was people under the age
7 of 18 prior to 1998?

8 A. Sure. But all the magazines we were in
9 met the criteria for circulation that we had

10 established. We didn't have a criteria for
11 readership in place, as I have already described
12 why, but we did have a criteria for circulation,
13 and we were only running our advertisements in
14 magazines with a predominantly adult circulation.

15 Q. I think I recall your testimony in
16 Engle, that you have since, approximately the end
17 of 1999, eliminated cigarette advertising from
18 approximately 40 magazines based on --

19 A. It's more than 40, but we have
20 eliminated all the magazines for which there is
21 readership data where more than 15 percent of the
22 readership is below the age of 18, and that is a
23 pretty large number, and it's a number of magazines
24 that you mentioned, like Sports Illustrated and
25 Rolling Stone.

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1 Szymanczyk

2 But again, I want to point out that
3 those magazines in terms of their circulation are
4 adult circulation magazines, and even their
5 readership is a very, very high adult readership;
6 but we have eliminated them because we have agreed
7 to the premise with the AGs that we would lead in
8 the effort of trying to lower the amount of
9 cigarette marketing in this country. So we made
10 that decision as a good-faith effort.

11 Q. And prior to that time, you advertised
12 in all the magazines that you have since terminated
13 your advertisements with?

14 A. We were advertising in them at the time
15 we terminated from them. I can't tell you that we
16 advertised in all those magazines all of the time.
17 Some of them may have been new, some of them we may
18 have only advertised in recently.

19 I don't know that precisely, but I would
20 say on the whole, most of those magazines were
21 magazines that we had been running ads in.

22 Q. And you reserve your right to place
23 advertisements back in those magazines if some
24 independent third party determines that the
25 readership data suggests that less than 15 percent

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1 Szymanczyk

2 of readership are people under the age of 18?

3 A. Well, I haven't reserved the right. We
4 will see what happens once we get that information.
5 I doubt we will do that. But I suppose the
6 possibility exists if the Attorneys General were
7 satisfied that the research was quality research
8 and that the data that we had used to make the
9 decision was flawed, and that there didn't appear
10 to be a good reason why we wouldn't advertise in
11 that magazine, then we might. But I think we will
12 cross that bridge when we get to that. I find it
13 doubtful that we would do that.

14 Q. In February of 1999, are you aware that
15 the company suffered an adverse verdict in a case
16 called Henley?

17 A. Yes.

18 Q. And that occurred in February of 1999?

19 A. Yes.

20 Q. And also in February of 1999 --

21 A. I believe it was February.
22 Q. Excuse me?
23 A. I will accept you saying it's February.
24 I'm not sure.
25 Q. And also in February of 1999, are you

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1 Szymanczyk
2 aware that the company suffered an adverse verdict
3 in a case called Williams?
4 A. I know we suffered a verdict in a case
5 called Williams. I can't specify the time.
6 Q. And in July of 1999, the company
7 suffered an adverse verdict in the liability phase
8 of the Engle trial; is that correct?
9 A. That's correct.
10 Q. And in April 2000, the jury in the Engle
11 case came down with an adverse verdict in the
12 compensatory damages phase of the Engle trial; is
13 that correct?
14 A. I believe it was April, yes.
15 Q. And in July of 2000, the jury in the
16 Engle case came down with a punitive damages
17 verdict against the company; is that correct?
18 A. I believe that's correct.
19 Q. And the company launched its web site on
20 October 13, 1999; is that correct?
21 A. It was October. I can't specify the
22 date.
23 Q. And that was after the liability
24 judgment came down on Engle and also the two
25 verdicts in the Henley and Williams case; is that

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1 Szymanczyk
2 correct?
3 A. If you say so. I am assuming your
4 chronology is correct because I didn't write it
5 down. You said a lot of dates, and I can't
6 remember them all.
7 Q. Recently, I have noticed on TV an
8 advertisement regarding the Master Settlement
9 Agreement. I wouldn't call it an advertisement but
10 a piece on TV that has been paid for by the Philip
11 Morris Companies, I believe, regarding the terms of
12 the Master Settlement Agreement.
13 Do you know what I am referring to?
14 A. Yes, I do.
15 Q. When was the first time that was
16 circulated on TV?
17 A. When did those TV ads start running?
18 Q. Yes.
19 A. I believe they started running late
20 July, early August.
21 Q. And it's a fact that those TV ads ran
22 after the punitive damages verdict came down in the
23 Engle case; is that correct?
24 A. I believe that's correct.
25 Q. Did you approve the running of those

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1 Szymanczyk
2 advertisements?
3 A. I did, yes.
4 Q. I think you testified before that you
5 also -- I apologize if I am mischaracterizing what

6 was said, I'm sure Mr. Bleakley will object if I
7 do -- authorized the lunching of the web site in
8 October of 1999.

9 A. That's correct.

10 Q. You referred in response to Mr. Motley's
11 question that you had entered into an agreement
12 with certain members of Congress regarding that
13 there should be a uniformed voice regarding issues
14 regarding smoking and health; is that correct?

15 A. I have said that, yes.

16 Q. What members of Congress?

17 A. I didn't do it.

18 Q. The company I mean.

19 A. I believe that Senator Hatch, I think
20 Senator Kennedy. I believe those were two. I
21 couldn't name all of them.

22 Q. Is that agreement embodied in any
23 legislation?

24 A. No.

25 Q. Is it embodied in any written agreement?

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2 A. I think there is a letter, if my memory
3 serves me correctly.

4 Q. Would you agree with me or isn't it true
5 that your citation to this Agreement is a way for
6 the company to avoid making public admissions
7 regarding smoking?

8 MR. BLEAKLEY: Objection.

9 A. I'm sorry?

10 Q. Isn't it true that by referring to this
11 Agreement that you have made with two Senators of
12 the United States Senate is a way for the company
13 to avoid having to make public admissions regarding
14 smoking and health?

15 A. No, I wouldn't agree with that.

16 Q. Has the company made any public
17 admissions regarding smoking and health in the past
18 two years in your opinion?

19 A. Well, I don't know what you mean by
20 "public admissions." We have put information on
21 our web site regarding smoking and health, provided
22 the public health community information, and we
23 have directed consumers, adult consumers, that we
24 believe that they should rely on that information
25 in making decisions about smoking and health.

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1 Szymanczyk

2 Q. You testified earlier, and I believe you
3 testified in Engle, that of concern to the company
4 these days is prevention of youth smoking; is that
5 correct?

6 A. Correct.

7 Q. And you have set up a department within
8 your company, I believe within Philip Morris
9 U.S.A., I don't think I have the exact name of it,
10 but Carolyn Levy is the head of the department?
11 What's the name of that?

12 A. It's the youth smoking prevention.

13 Q. Youth smoking prevention?

14 A. It's the youth smoking prevention
15 department.

16 You want to know the name of the person

17 who runs it? Is that your question?
18 Q. I thought I had it, but --
19 A. It's Carolyn Levy.
20 Q. And you approved the appointment of
21 Ms. Levy to become the head of the youth smoking
22 prevention department?
23 A. I appointed her.
24 Q. The youth smoking prevention department
25 has a budget of approximately \$100 million; is that

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1 Szymanczyk
2 correct?
3 A. It started there. It's a bit higher
4 than that now.
5 Q. What is it now?
6 A. I think it's going to come in around
7 \$110 million this year.
8 Q. This youth smoking prevention department
9 was established in what year?
10 A. It was established in 1998, in the
11 spring of 1998.
12 Q. Prior to 1998, the company didn't have
13 any youth smoking prevention department; is that
14 correct?
15 A. We did not have one.
16 Q. You had mentioned earlier that prior to
17 1998 the company had started the We Card program;
18 is that correct?
19 A. The We Card program went into place, I
20 believe, 1995, if my memory serves me correctly.
21 Q. And prior to 1995, the company didn't
22 have any program designed for carding or checking
23 that teenagers weren't purchasing cigarettes at
24 local stores?
25 A. No, that's not true. Prior to that, we

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1 Szymanczyk
2 had a program called It's The Law, where we
3 provided signage to retailers; we also had a
4 marketing code when I joined the company relative
5 to restricting our marketing practices to people
6 who are 21 or above.
7 So yes, we did have other things in
8 place at least in the entire time that I have been
9 with the company, and they have grown over time.
10 So we had those things in place when I started, and
11 we have continued to add spending to the program
12 and activities to the program over the course of
13 the ten years that I have been here.
14 Q. Would it be fair to say that the company
15 has not spent prior to 1998 close to \$100 million
16 on its prior activities with respect to We Card and
17 It's The Law programs?
18 A. I don't know how much we spent. I would
19 say we are certainly spending a lot more today, but
20 I can't tell you what the specific numbers were.
21 Q. Do you have any idea what the budget for
22 the It's The Law program was?
23 A. No.
24 Q. Do you have any idea what the budget for
25 the We Card program was prior to 1998?

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2 A. I do not. The We Card program isn't
3 just a Philip Morris program. All the tobacco
4 companies participate. We are the largest funder,
5 but they all participate, all of the major tobacco
6 companies participate.

7 Q. But as far as you know, you are the
8 largest funder, you can't give me a specific figure
9 on how much the company spends on the We Card
10 program?

11 A. I cannot, no.

12 MR. HEFTER: Let me mark for
13 identification Plaintiff's Exhibit 26, which
14 is an excerpt from the Philip Morris web
15 site entitled, "Cigarette smoking, health
16 issues for smokers."

17 (Plaintiff's Exhibit 26, excerpts from
18 Philip Morris web site, marked for
19 identification, as of this date.)

20 MR. SCHROEDER: Mr. Hefter, has this
21 topic not been covered in any other
22 deposition? Do you know?

23 MR. HEFTER: It's possible that it may
24 have been.

25 MR. SCHROEDER: There is an Order in

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1 Szymanczyk
2 this case by the Magistrate Judge that the
3 topics to be covered are not to be
4 duplicative of the other depositions of the
5 company employees, and I was simply asking
6 whether we were treading over topics that
7 have previously been the subject of
8 examination.

9 MR. HEFTER: I think whether it has
10 been the subject of previous examination or
11 not, it's sufficiently important to us that
12 I am going to go ahead and ask the questions
13 anyway.

14 MR. SCHROEDER: I would just note my
15 objection to the extent that that's contrary
16 to Magistrate Judge Golds' Order in this
17 case.

18 Q. Let me show this to the witness.

19 A. Yes.

20 Q. Have you seen this before?

21 A. Yes.

22 Q. Let me just read it quickly for the
23 record. It states, "There is an overwhelming
24 medical and scientific consensus that cigarette
25 smoking causes lung cancer, heart disease,

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1 Szymanczyk
2 emphysema, and other serious diseases in smokers.
3 Smokers are far more likely to develop serious
4 diseases, like lung cancer, than nonsmokers. There
5 is no safe cigarette. These are and have been the
6 messages of public health authorities worldwide.
7 Smokers and potential smokers should rely on these
8 messages relating to all smoking-related
9 decisions."

10 Do you agree with that statement?

11 A. I do.

12 Q. Does Philip Morris agree with that

13 statement?
14 A. Yes, it does.
15 Q. Do you believe that smoking causes lung
16 cancer?
17 A. I do.
18 Q. Would you agree with me that nowhere in
19 your web site does the web site state that Philip
20 Morris agrees with this statement?
21 A. It doesn't say that specifically. But
22 as I testified before, I believe it's an implied
23 agreement when we direct smokers to rely on these
24 messages, and I have testified to that, that we
25 agree with this statement.

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1 Szymanczyk
2 Q. But there is nowhere in your web site or
3 on this page where it says that Philip Morris
4 agrees --
5 A. It does not say that specifically, no.
6 Q. If you can just let me finish, and I
7 will try to let you finish.
8 There is no place on the web site or on
9 this page where it says that Philip Morris agrees
10 that there is an overwhelming medical and
11 scientific consensus?
12 A. It does not say those words, no.
13 Q. Prior to October 13, 1999, it is true,
14 is it not, that there were no statements made by
15 Philip Morris in the press or in the media that
16 there is an overwhelming medical and scientific
17 consensus that cigarette smoking causes lung
18 cancer, heart disease, emphysema, and other serious
19 diseases in smokers?
20 A. Prior to that date, there were
21 statements made by the company relative to smoking
22 and the risks associated with health; but, no, this
23 particular statement was made on October 13th.
24 Q. Am I correct in stating that nowhere in
25 the media or to the public has Philip Morris stated

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1 Szymanczyk
2 that cigarette smoking causes lung cancer?
3 A. I don't know whether that's true or not.
4 Whether or not we stated that anywhere in the
5 media? I believe that has been printed in the
6 media. I believe it was printed in the media when
7 this web site came out.
8 Q. Let me clarify my question.
9 Has Philip Morris ever stated in the
10 media that smoking causes lung cancer?
11 A. I don't know.
12 Q. Isn't it a fact that Philip Morris has
13 never stated in the media that cigarette smoking
14 causes lung cancer?
15 A. I don't know the answer to your
16 question.
17 Q. You just don't know?
18 A. I just don't know.
19 Q. Have you ever tried to find out whether
20 Philip Morris has ever stated that cigarette
21 smoking causes lung cancer?
22 A. No.
23 Q. I take it from your answer that since

24 you have been CEO, you don't know whether the
25 company has made any statement in the media that

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1 Szymanczyk
2 smoking causes lung cancer?
3 A. We made this statement on our web site.
4 So we have made the statement, and we have directed
5 consumers that they should listen to this
6 statement, and I have made the statement in
7 testimony.
8 I haven't had an occasion to be asked
9 that question in the media, but we have provided
10 the statement on our web site, and I have made the
11 statement in the media, and I believe others in the
12 company have made this statement publicly.
13 Q. That cigarette smoking causes lung
14 cancer?
15 A. I can't tell you if those are the exact
16 words, but if you have got something you want me to
17 look at, I will look at it.
18 Q. I don't think you have ever made the
19 statement, but that's my own --
20 A. I have made that statement.
21 MR. SCHROEDER: Objection.
22 A. I have made that statement. I have made
23 that statement in my testimony.
24 Q. And you have made that statement in the
25 Engle trial?

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1 Szymanczyk
2 A. In the Engle trial.
3 Q. Have you ever made that statement in a
4 press release?
5 A. No, I have never done a press release.
6 Q. Has Philip Morris ever stated that
7 smoking causes lung cancer in a press release?
8 A. Not to my knowledge.
9 Q. Has Philip Morris ever stated in any
10 full-page or any newspaper advertisement that
11 cigarette smoking causes lung cancer?
12 A. I don't believe we have, no.
13 MR. HEFTER: I don't think I have that
14 much more.
15 MR. BLEAKLEY: What's not that much
16 more?
17 MR. HEFTER: I think we are talking
18 half hour or less.
19 MR. BLEAKLEY: Half hour or less?
20 MR. HEFTER: I think.
21 A. Why don't we see if we can wrap it up
22 by 5:30.
23 Q. I am going to try my best, but I can't
24 make you any promises. I believe we are entitled
25 to ask you these questions. I will be as

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1 Szymanczyk
2 accommodating as possible.
3 A. We may just need to go to another day,
4 that's why --
5 MR. BLEAKLEY: Let's not promise
6 another day. Don't promise another day.
7 Let's go until 5:30, and then we will go off
8 the record and discuss it.

9 Q. Prior to your testimony in the Engle
10 case, isn't it true that Philip Morris has never
11 stated publicly that smoking causes lung cancer?
12 MR. BLEAKLEY: Objection. Asked and
13 answered.
14 A. I don't know. I don't know the answer
15 to that.
16 Q. Philip Morris is subject to many cases
17 brought by individual smokers claiming that their
18 particular disease was caused by smokage; is that
19 correct?
20 A. There are a number of pieces of
21 litigation filed against the company of different
22 types, some are individual smoking health claims.
23 Q. How many individual smoking health
24 claims do you think the company is currently
25 subject to?

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1 Szymanczyk
2 A. I don't know the exact number.
3 Q. Would it be fair to say hundreds?
4 A. I think that's correct, yes.
5 Q. Would it be fair to say that the company
6 in all individual smoker litigation that it has
7 engaged in since you have been CEO has taken the
8 position that that particular smoker's disease was
9 not caused by smoking?
10 A. Ask the question again.
11 Q. It's true, is it not, that in all of the
12 individual smoker cases that are pending against
13 the company since you have been CEO, the company
14 has taken the position that that particular
15 smoker's disease, that particular plaintiff's
16 disease, was not caused by smoking?
17 A. I don't know.
18 MR. BLEAKLEY: Objection.
19 Q. Can you identify any case since you have
20 been CEO where the company has taken the position
21 that the individual's disease was caused by
22 smoking?
23 A. Well, no --
24 MR. BLEAKLEY: Objection.
25 A. -- I wouldn't have reviewed that

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1 Szymanczyk
2 specifically. People that defend the cases look at
3 the facts relevant to each case, and make the
4 determination as to what the company should do and
5 what's right for us to defend. So I don't have the
6 answer to that question.
7 Q. You state on your web site that there is
8 a consensus in the medical and scientific community
9 regarding smoking and health, that's correct,
10 right?
11 A. That's the language that says that there
12 is an overwhelming scientific and medical
13 consensus, I believe. There is an overwhelming
14 medical and scientific consensus.
15 Q. Would you agree with me that there was
16 an overwhelming and scientific consensus in 1990
17 when you joined the company?
18 A. I am not aware of what the specific
19 scientific data was at that point in time. So I

20 can't tell you the answer to the question.
21 Q. So you don't know one way or the other?
22 A. I really don't know.
23 Q. Would you provide me with the same
24 answer to anytime prior to 1990?
25 A. Well, prior to 1990, I wasn't aware of

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1 Szymanczyk
2 what the scientific information was, nor was I in
3 1990 relative to what the body of epidemiological
4 data was.
5 So the answer would be I really don't
6 know what was there at that point in time. I
7 assumed that that body of evidence has grown over
8 time, but I don't know the specifics related to
9 that.
10 Q. When you were making the decision to
11 authorize release of that web site, you didn't ask
12 anybody within the company or any scientist whether
13 that scientific consensus existed in 1990?
14 A. No, I did not.
15 Q. Or at any time prior to October 13,
16 1997?
17 A. I didn't ask that question.
18 Q. I believe your testimony today is that
19 smoking is addictive; is that correct?
20 A. Yes, that's what I said.
21 Q. Can you identify any public statement by
22 the company that smoking is addictive?
23 A. It says it on our web site.
24 Q. Prior to the launch of the web site,
25 it's true, is it not, that you cannot identify any

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1 Szymanczyk
2 statement by Philip Morris to the public that
3 smoking is addictive?
4 A. I don't have that information. I'm not
5 aware of one.
6 Q. On your web site, you identify the
7 ingredients in cigarettes; is that correct?
8 A. In our cigarettes, we do, yes.
9 Q. Would you agree with me that the web
10 site does not identify the constituents in tobacco
11 smoke that a smoker inhales when they light up a
12 cigarette?
13 A. Well, access to that information is
14 available on the web site because it's listed in a
15 number of public health documents. But relative to
16 the specific subject of smoke constituents, there
17 is actually a project underway by the Institute of
18 Medicine that has been sanctioned by the FDA to
19 make some determination as to what is appropriate
20 information to give consumers relative to smoke
21 constituents.
22 And so, we are working with the IOM on
23 that subject. They have invited us to have some
24 participation in that; and ultimately, I think
25 their objective that they have been given by the

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1 Szymanczyk
2 FDA is to make a determination as to what is
3 appropriate to do relative to smoke constituents,
4 particularly as they relate to some lower-risk

5 products that may become available in the
6 marketplace.

7 So at this point, the consumer can
8 understand that by going through some of the data
9 that's accessible through the web site. But in
10 terms of an actual presentation of smoke
11 constituency information, I think we are going to
12 wait for some guidance from the public health
13 authorities on how they want to have that done, and
14 that project is underway.

15 Q. So it is true as it currently stands the
16 web site does not have a listing by Philip Morris
17 of the constituents in tobacco smoke that's inhaled
18 when a smoker lights up a cigarette?

19 A. No, that information is not on the web
20 site.

21 Q. Would you agree that there are known
22 human carcinogens in tobacco smoke?

23 A. Public health authorities have
24 identified certain components that exists in
25 cigarette smoke as carcinogens.

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1 Szymanczyk

2 Q. Would you agree that the carcinogens
3 identified by the public health community are human
4 carcinogens?

5 A. You would have to ask a scientist that.
6 I accept that from the public health community. I
7 am not a scientist, so I am not going to make a
8 judgment on it.

9 Q. But as the CEO of Philip Morris --

10 A. I accept the fact that they say those
11 things are human carcinogens.

12 Beyond trusting the fact that they are
13 good scientists and they have used good scientific
14 methodologies, I have no way of knowing that one
15 way or the other, other than to accept it on face
16 value from them.

17 Q. It is true, is it not, that you cannot
18 identify any public statement by Philip Morris that
19 there are known human carcinogens in tobacco smoke?

20 MR. BLEAKLEY: Objection to form.

21 You can answer.

22 A. I am not aware of whether a statement of
23 that nature has been made or not.

24 Q. You are not aware one way or the other?

25 A. No, I am not.

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1 Szymanczyk

2 Q. Have you ever sought to determine
3 whether the company had ever made the statement
4 that there are known human carcinogens in tobacco
5 smoke?

6 A. There are some limitations relative to
7 constituencies in tobacco smoke, and FTC -- because
8 again, the determination has not been made by the
9 public health authorities as to how to deal with
10 that issue.

11 I think the concern is that there be any
12 comparison set up for the consumer between products
13 relative to constituency in smoke that might lead
14 the consumer to believe that one cigarette is safer
15 than another cigarette.

16 So at this time, that's why it's an
17 active project, because it isn't clear that's what
18 the public health community wants done or how they
19 want it done, and that's one of the reasons we
20 haven't done it.

21 We certainly want to know the answer to
22 that question, because frankly, some of the
23 products that we are developing will need to have
24 the answer to that question.

25 If we are successful in taking some of

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1 Szymanczyk
2 these constituencies out, we are going to need to
3 know what the public health community wants us to
4 tell the public.

5 Q. Isn't it true that internal Philip
6 Morris researchers have identified carcinogens in
7 tobacco smoke?

8 A. Well, researchers all over the world
9 have the same capability to determine what's in
10 smoke; and I think it's generally held by us and by
11 researchers outside of the company, including
12 government researchers, that the constituencies in
13 smoke, or for any burned organic material, exists
14 and some of them are known carcinogens.

15 Q. You believe, do you not, that cigarette
16 smoking has caused the deaths of people in the
17 United States? Is that true?

18 MR. BLEAKLEY: Objection. Asked and
19 answered earlier today.

20 A. I already answered that question.

21 Q. You can go ahead and answer it again,
22 please.

23 A. You want to refer back to my answer. I
24 have already given the answer to your question,
25 which is that based on the statistics, I think you

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1 Szymanczyk
2 have to assume that some people have gotten
3 diseases and, in fact, died from tobacco, either
4 tobacco alone or tobacco in conjunction with
5 something else.

6 MR. HEFTER: Why don't we go off the
7 record, and I will take a look through what
8 I've got and see if I have got anything
9 more, and then we will go home.

10 THE VIDEOGRAPHER: The time is 5:19
11 p.m. We are going off the record.

12 (Discussion off the record.)

13 THE VIDEOGRAPHER: The time is 5:25
14 p.m. We are back on the record.

15 Q. You just testified that based on the
16 statistics that people have contracted
17 tobacco-related diseases.

18 Wouldn't it be true that if you had 100
19 people who smoked for over 20 years, let's say,
20 that at least some of those people contracted lung
21 cancer and died because of smoking?

22 MR. BLEAKLEY: Objection to form.

23 MR. SCHROEDER: Objection.

24 A. I don't know. I mean, I would say to
25 you that out of the mass of the population that

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1 Szymanczyk
2 smokes, the statistics would indicate that some of
3 them got a disease that could have been caused by
4 smoking, and that they died of that disease.

5 If that's what they died of, then they
6 would have died from smoking. But I can't tell you
7 out of a hundred people or out of a thousand,
8 because I don't have the statistics to be able to
9 do that.

10 Q. Isn't it true that in all individual
11 smoker cases the company has defended those cases
12 by stating that the individual's disease was not
13 caused by smoking?

14 MR. BLEAKLEY: Objection. Asked and
15 answered.

16 A. Again, I don't know the answer to that
17 in all cases. But each case is defended based on
18 the merits of that particular case.

19 Q. Can you identify for me any case in
20 which the company has not taken the position in an
21 individual smoker case that the person's disease
22 was not caused by smoking?

23 MR. BLEAKLEY: Objection. You just
24 asked that question 25 minutes ago, and he
25 answered it.

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1 Szymanczyk
2 A. I don't know the answer to the question.
3 Q. Is the answer you can't identify any case?
4 A. I am not aware whether there is or there
5 isn't.

6 Q. Can you identify for me any change in
7 the medical or scientific literature within the
8 past ten years on the question of addiction that
9 cause you to include your statement on the web site
10 regarding addiction?

11 MR. BLEAKLEY: Objection to form, but
12 you can answer.

13 A. Well, I don't think I would be the
14 right person to ask that question. I think you
15 would need to ask that question of a scientist that
16 goes through that literature.

17 I do know in 1988 the Surgeon General
18 changed his definition of "addiction." But as it
19 relates to scientific research and study, I don't
20 know the answer to that question.

21 Q. Can you identify any change in the
22 medical or scientific literature regarding
23 causation in smoking and health that cause you to
24 include the statement on your web site which is
25 Plaintiff's Exhibit 26?

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1 Szymanczyk
2 A. Well, again --

3 MR. BLEAKLEY: Objection to form.

4 A. -- I think the question would be better
5 directed to a scientist. But I can't identify that
6 for you or not.

7 Q. It is true that you can't identify any
8 change in the scientific or medical literature?

9 A. That's only true because I am not up to
10 date on all of that information. So I would be
11 unable to identify it.

12 MR. HEFTER: I don't think I have any
13 further questions.

14 THE VIDEOGRAPHER: The time is 5:29.
15 This completes the videotaped deposition of
16 Mr. Mike Szymanczyk.

17 (Time noted: 5:30 p.m.)

18
19 _____
20 MIKE SZYMANCZYK

21 Subscribed and sworn to before me
22 this ____ day of _____, 2000.

23
24
25 246

1
2 C E R T I F I C A T E

3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF NASSAU)
6

7 I, OTIS DAVIS, a Notary Public within
8 and for the State of NEW YORK, do hereby
9 certify:

10 That MIKE SZYMANCZYK, the witness
11 whose deposition is hereinbefore set forth,
12 was duly sworn by me and that such
13 deposition is a true record of the testimony
14 given by the witness.

15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage, and that I am in no
18 way interested in the outcome of this
19 matter.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 11th day of September, 2000.

22
23
24 _____
25 OTIS DAVIS

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